

*The People of the State of Michigan enact:*

**380.623a Procurement of supplies, materials, and equipment; written policies; competitive bids; approval of purchase; adjustment of maximum amount; local policy giving preference to Michigan-based business; items purchased through cooperative bulk purchasing program; heating and cooking equipment; “Michigan-based business” defined.**

Sec. 623a. (1) An intermediate school board shall adopt written policies governing the procurement of supplies, materials, and equipment.

(2) Except as otherwise provided in subsection (4) or (5), an intermediate school district shall not purchase an item or a group of items purchased in a single transaction costing \$20,959.00 or more unless competitive bids are obtained for those items and the purchase of those items is approved by the intermediate school board. The maximum amount specified in this section shall be adjusted each year by multiplying the amount for the immediately preceding year by the percentage by which the average consumer price index for all items for the 12 months ending August 31 of the year in which the adjustment is made differs from that index’s average for the 12 months ending on August 31 of the immediately preceding year and adding that product to the maximum amount that applied in the immediately preceding year, rounding to the nearest whole dollar.

(3) The intermediate school board of an intermediate school district may adopt and implement a local policy that gives a preference to a Michigan-based business in awarding a contract under this section. The policy may provide for a preference based on the status of the primary contractor as a Michigan-based business or based on the status of 1 or more subcontractors of the primary contractor as Michigan-based businesses, or both. A policy adopted under this subsection shall be consistent with federal statutes and regulations and shall not be applied to a contract that is to be paid with federal funds. Upon request by an intermediate school district that has adopted and implemented a policy described in this subsection, the department of treasury shall disclose to that intermediate school district verifying information as described in section 268(3) of the management and budget act, 1984 PA 431, MCL 18.1268. The adoption, implementation, or application of a policy described in this subsection, or a decision not to adopt, implement, or apply such a policy, does not create a cause of action.

(4) An intermediate school district is not required to obtain competitive bids for items purchased through the cooperative bulk purchasing program operated by the department of management and budget under section 263(3) of the management and budget act, 1984 PA 431, MCL 18.1263.

(5) An intermediate school district is not required to obtain competitive bids for purchasing food unless the food is purchased in a single transaction costing \$100,000.00 or more.

(6) The intermediate school board of an intermediate school district may acquire by purchase, lease, or rental, with or without option to purchase, equipment necessary for the operation of intermediate school district programs, including, but not limited to, heating, water heating, and cooking equipment for school buildings, and may pay for the equipment from operating funds of the intermediate school district. Heating and cooking equipment may be purchased on a title retaining contract or other form of agreement creating a security interest and pledging in payment money in the general fund or funds received from state school aid. The contracts may extend for not more than 10 years.

(7) As used in this section, “Michigan-based business” means a business that would qualify for a preference in a procurement contract with this state as determined under section 268 of the management and budget act, 1984 PA 431, MCL 18.1268.

**380.1267 School buildings; construction, addition, repair, or renovation; bids; exception; advertising; security; opening and reading of bids; rejection of bids; readvertising; local policy giving preference to Michigan-based business; applicability of section; adjustment of maximum amount; “Michigan-based business” defined.**

Sec. 1267. (1) Before commencing construction of a new school building, or addition to or repair or renovation of an existing school building, except repair in emergency situations, the board of a school district or intermediate school district or board of directors of a public school academy, shall obtain competitive bids on all the material and labor required for the complete construction of a proposed new building or addition to or repair or renovation of an existing school building.

(2) The board, intermediate school board, or board of directors shall advertise for the bids required under subsection (1) by placing an advertisement for bids at least once in a newspaper of general circulation in the area where the building or addition is to be constructed or where the repair or renovation of an existing building is to take place and by posting an advertisement for bids for at least 2 weeks on the department of management and budget website on a page on the website maintained for this purpose or on a website maintained by a school organization and designated by the department of management and budget for this purpose. If the department of management and budget designates a school organization website for this purpose, the department of management and budget shall indicate this fact on its website and include a link on its website to the school organization website.

(3) The advertisement for bids shall do all of the following:

(a) Specify the date and time by which all bids must be received by the board, intermediate school board, or board of directors.

(b) State that the board, intermediate school board, or board of directors will not consider or accept a bid received by the board, intermediate school board, or board of directors after the date and time specified for bid submission.

(c) Identify the time, date, and place of a public meeting at which the board, intermediate school board, or board of directors or its designee will open and read aloud each bid received by the board, intermediate school board, or board of directors by the date and time specified in subdivision (a).

(d) State that the bid shall be accompanied by a sworn and notarized statement disclosing any familial relationship that exists between the owner or any employee of the bidder and any member of the board, intermediate school board, or board of directors or the superintendent of the school district, intermediate superintendent of the intermediate school district, or chief executive officer of the public school academy. A board, intermediate school board, or board of directors shall not accept a bid that does not include this sworn and notarized disclosure statement.

(4) The board, intermediate school board, or board of directors shall require each bidder for a contract under this section to file with the board, intermediate school board, or board of directors security in an amount not less than 1/20 of the amount of the bid conditioned to secure the school district from loss or damage by reason of the withdrawal of the bid or by the failure of the bidder to enter a contract for performance, if the bid is accepted by the board, intermediate school board, or board of directors.

(5) The board, intermediate school board, or board of directors shall not open, consider, or accept a bid that the board, intermediate school board, or board of directors receives after the date and time specified for bid submission in the advertisement for bids described in subsection (3).

(6) At a public meeting identified in the advertisement for bids described in subsection (3), the board, intermediate school board, or board of directors or its designee shall open

and read aloud each bid that the board, intermediate school board, or board of directors received at or before the time and date for bid submission specified in the advertisement for bids. The board, intermediate school board, or board of directors may reject any or all bids, and if all bids are rejected, shall readvertise in the manner required by this section.

(7) The board of a school district or intermediate school district or board of directors of a public school academy may adopt and implement a local policy that gives a preference to a Michigan-based business in awarding a contract under this section. The policy may provide for a preference based on the status of the primary contractor as a Michigan-based business or based on the status of 1 or more subcontractors of the primary contractor as Michigan-based businesses, or both. A policy adopted under this subsection shall be consistent with federal statutes and regulations and shall not be applied to a contract that is to be paid with federal funds. Upon request by a school district, intermediate school district, or public school academy that has adopted and implemented a policy described in this subsection, the department of treasury shall disclose to that school district, intermediate school district, or public school academy verifying information as described in section 268(3) of the management and budget act, 1984 PA 431, MCL 18.1268. The adoption, implementation, or application of a policy described in this subsection, or a decision not to adopt, implement, or apply such a policy, does not create a cause of action.

(8) This section does not apply to buildings, renovations, or repairs costing less than \$20,959.00 or to repair work normally performed by school district, intermediate school board, or public school academy employees. The maximum amount specified in this subsection shall be adjusted each year by multiplying the amount for the immediately preceding year by the percentage by which the average consumer price index for all items for the 12 months ending August 31 of the year in which the adjustment is made differs from that index's average for the 12 months ending on August 31 of the immediately preceding year and adding that product to the maximum amount that applied in the immediately preceding year, rounding to the nearest whole dollar.

(9) As used in this section, "Michigan-based business" means a business that would qualify for a preference in a procurement contract with this state under section 268 of the management and budget act, 1984 PA 431, MCL 18.1268.

**380.1274 Procurement of supplies, materials, and equipment; written policies; competitive bids; approval of purchase; adjustment of maximum amount; local policy giving preference to Michigan-based business; items purchased through cooperative bulk purchasing program; acquisition of equipment; payment; purchase of heating and cooking equipment; "Michigan-based business" defined.**

Sec. 1274. (1) The board of a school district or board of directors of a public school academy shall adopt written policies governing the procurement of supplies, materials, and equipment.

(2) Except as otherwise provided in subsection (4) or (5), a school district or public school academy shall not purchase an item or a group of items in a single transaction costing \$20,959.00 or more unless competitive bids are obtained for those items and the purchase of those items is approved by the school board or board of directors. The maximum amount specified in this subsection shall be adjusted each year by multiplying the amount for the immediately preceding year by the percentage by which the average consumer price index for all items for the 12 months ending August 31 of the year in which the adjustment is made differs from that index's average for the 12 months ending on August 31 of the immediately preceding year and adding that product to the maximum amount that applied in the immediately preceding year, rounding to the nearest whole dollar.

(3) The board of a school district or board of directors of a public school academy may adopt and implement a local policy that gives a preference to a Michigan-based business in awarding a contract under this section. The policy may provide for a preference based on the status of the primary contractor as a Michigan-based business or based on the status of 1 or more subcontractors of the primary contractor as Michigan-based businesses, or both. A policy adopted under this subsection shall be consistent with federal statutes and regulations and shall not be applied to a contract that is to be paid with federal funds. Upon request by a school district or public school academy that has adopted and implemented a policy described in this subsection, the department of treasury shall disclose to that school district or public school academy verifying information as described in section 268(3) of the management and budget act, 1984 PA 431, MCL 18.1268. The adoption, implementation, or application of a policy described in this subsection, or a decision not to adopt, implement, or apply such a policy, does not create a cause of action.

(4) A school district or public school academy is not required to obtain competitive bids for items purchased through the cooperative bulk purchasing program operated by the department of management and budget under section 263(3) of the management and budget act, 1984 PA 431, MCL 18.1263.

(5) A school district or public school academy is not required to obtain competitive bids for purchasing food unless the food is purchased in a single transaction costing \$100,000.00 or more.

(6) The board of a school district or local act school district or board of directors of a public school academy may acquire by purchase, lease, or rental, with or without option to purchase, equipment necessary for the operation of the school program, including, but not limited to, heating, water heating, and cooking equipment for school buildings, and may pay for the equipment from operating funds of the district or public school academy. Heating and cooking equipment may be purchased on a title retaining contract or other form of agreement creating a security interest and pledging in payment money in the general fund or funds received from state school aid. The contracts may extend for not more than 10 years.

(7) As used in this section, “Michigan-based business” means a business that would qualify for a preference in a procurement contract with this state as determined under section 268 of the management and budget act, 1984 PA 431, MCL 18.1268.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 541]**

**(HB 6456)**

AN ACT to amend 1967 PA 270, entitled “An act to provide for the release of certain information or data relating to health care research or education, health care entities, practitioners, or professions, or certain governmentally funded programs; to limit the liability with respect to the release of certain information or data; and to safeguard the confidential character of certain information or data,” by amending the title and section 1 (MCL 331.531), the title as amended by 1980 PA 3 and section 1 as amended by 2005 PA 89, and by adding section 4.

*The People of the State of Michigan enact:*

TITLE

An act to provide for the collection, reporting, and release of certain information or data relating to health care research or education, patient safety, health care entities, practitioners, or professions, or certain governmentally funded programs; to limit the liability with respect to the collection, reporting, and release of certain information or data; and to safeguard the confidential character of certain information or data.

**331.531 Providing information or data to review entity regarding physical condition, psychological condition, health care of person, or qualifications of provider; “review entity” defined; liability; disciplinary actions to be reported to department of community health.**

Sec. 1. (1) A person, organization, or entity may provide to a review entity information or data relating to the physical or psychological condition of a person, the necessity, appropriateness, or quality of health care rendered to a person, or the qualifications, competence, or performance of a health care provider.

(2) As used in this section, “review entity” means 1 of the following:

(a) A duly appointed peer review committee of 1 of the following:

(i) The state.

(ii) A state or county association of health care professionals.

(iii) A health facility or agency licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(iv) A health care association.

(v) A health care network, a health care organization, or a health care delivery system composed of health professionals licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, or composed of health facilities licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or both.

(vi) A health plan qualified under the program for medical assistance administered by the department of human services under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(b) A professional standards review organization qualified under federal or state law.

(c) A foundation or organization acting pursuant to the approval of a state or county association of health care professionals.

(d) A state department or agency whose jurisdiction encompasses the information described in subsection (1).

(e) An organization established by a state association of hospitals or physicians, or both, that collects and verifies the authenticity of documents and other data concerning the qualifications, competence, or performance of licensed health care professionals and that acts as a health facility’s agent pursuant to the health care quality improvement act of 1986, title IV of Public Law 99-660, 42 USC 11101 to 11152.

(f) A professional corporation, limited liability partnership, or partnership consisting of 10 or more allopathic physicians, osteopathic physicians, or podiatric physicians and surgeons licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, who regularly practice peer review consistent with the requirements of article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(g) An organization established by a state association of pharmacists, that collects and verifies the authenticity of documents and other data concerning the qualifications, competence, or performance of licensed pharmacists and pharmacies.

(h) A qualified hospital patient safety organization that collects data on serious adverse events under section 4.

(3) A person, organization, or entity is not civilly or criminally liable:

(a) For providing information or data pursuant to subsection (1).

(b) For an act or communication within its scope as a review entity.

(c) For releasing or publishing a record of the proceedings, or of the reports, findings, or conclusions of a review entity, subject to sections 2 and 3.

(4) The immunity from liability provided under subsection (3) does not apply to a person, organization, or entity that acts with malice.

(5) An entity described in subsection (2)(a)(v) or (vi) that employs, contracts with, or grants privileges to a health professional licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, shall report each of the following to the department of community health not more than 30 days after it occurs:

(a) Disciplinary action taken by the entity against a health professional licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, based on the health professional's professional competence, disciplinary action that results in a change of the health professional's employment status, or disciplinary action based on conduct that adversely affects the health professional's clinical privileges for a period of more than 15 days. As used in this subdivision, "adversely affects" means the reduction, restriction, suspension, revocation, denial, or failure to renew the clinical privileges of a health professional by an entity described in subsection (2)(a)(v) or (vi).

(b) Restriction or acceptance of the surrender of the clinical privileges of a health professional under either of the following circumstances:

(i) The health professional is under investigation by the entity.

(ii) There is an agreement in which the entity agrees not to conduct an investigation into the health professional's alleged professional incompetence or improper professional conduct.

(c) A case in which a health professional resigns or terminates a contract or whose contract is not renewed instead of the entity taking disciplinary action against the health professional.

(6) Upon request by another entity described in subsection (2) seeking a reference for purposes of changing or granting staff privileges, credentials, or employment, an entity described in subsection (2) that employs, contracts with, or grants privileges to health professionals licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, shall notify the requesting entity of any disciplinary or other action reportable under subsection (5) that it has taken against a health professional employed by, under contract to, or granted privileges by the entity.

(7) For the purpose of reporting disciplinary actions under subsection (5), an entity described in subsection (2)(a)(v) or (vi) shall include only the following in the information provided:

(a) The name of the health professional against whom disciplinary action has been taken.

(b) A description of the disciplinary action taken.

(c) The specific grounds for the disciplinary action taken.

(d) The date of the incident that is the basis for the disciplinary action.

(8) For the purpose of reporting disciplinary actions under subsection (6), an entity described in subsection (2) shall include in the report only the information described in subsection (7)(a) to (d).

### **331.534 Creation of nonpunitive, confidential reporting system by qualified hospital patient safety organization; public report; definitions.**

Sec. 4. (1) Beginning January 1, 2009, a qualified hospital patient safety organization shall create a nonpunitive, confidential reporting system to collect data regarding serious adverse events that occur in hospitals for the purpose of improving patient safety and to facilitate the safe delivery of health care in hospitals in this state.

(2) A qualified hospital patient safety organization shall annually develop and distribute a public report for the purpose of improving patient safety and to facilitate the safe delivery of health care in hospitals in this state.

(3) As used in this section:

(a) “Hospital” means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(b) “Qualified hospital patient safety organization” means a patient safety organization that was incorporated under state law before January 1, 2009 by an organization with a membership of at least 75% of all hospitals in this state and is organized to do the activities of a patient safety organization as described in 42 USC 299b-24.

(c) “Serious adverse event” includes, but is not limited to, those events listed by the national quality forum in its publication entitled “Serious Reportable Events in Healthcare 2006 Update”.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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## **[No. 542]**

### **(HB 5987)**

AN ACT to amend 1982 PA 325, entitled “An act to authorize county sheriffs to declare a county jail overcrowding state of emergency; to prescribe the powers and duties of certain judges, county sheriffs, and other county officials; and to provide remedies for a county jail overcrowding state of emergency,” by amending section 6 (MCL 801.56), as amended by 1988 PA 399.

*The People of the State of Michigan enact:*

### **801.56 Requirement of further actions; failure of certain actions to reduce population to level prescribed in subsection (1); presenting prisoner information to chief circuit judge; applicability of subsection (2)(b) to certain prisoners; review; classification of prisoners; reduction of sentences; duration; report.**

Sec. 6. (1) The further actions prescribed in subsections (2) to (5) and in sections 7 and 8 shall be required unless the actions taken pursuant to section 5 reduce the county’s jail population to the higher of the following:

(a) 90% of rated design capacity or a percentage of rated design capacity less than 90% as set by a court prior to February 8, 1983.

(b) A prisoner population such that the jail has the following number of empty beds:

(i) For a jail with a rated design capacity of less than 500 beds, at least 10 empty beds.

(ii) For a jail with a rated design capacity of 500 beds or more, at least 25 empty beds.

(2) If the actions taken pursuant to section 5 do not reduce the county jail's population to the level prescribed in subsection (1) within 14 days after the declaration of the county jail overcrowding state of emergency, the sheriff shall present to the chief circuit judge for the county in which the jail is located the following information for each prisoner housed in the county jail on that date:

(a) For prisoners who are serving a sentence of imprisonment for conviction of 1 or more crimes:

(i) The name of each prisoner.

(ii) The offense for which the prisoner was convicted.

(iii) The length of sentence imposed for the prisoner.

(iv) The date on which the prisoner began serving his or her sentence.

(v) The date on which the prisoner will be released from the jail according to the terms of his or her sentence, including computations for good time.

(vi) The name of the judge who imposed the sentence.

(b) For prisoners housed in the county jail, other than a prisoner described in subsection (3), who are not serving a sentence of imprisonment for conviction of a crime:

(i) The name of the prisoner.

(ii) The offense for which the prisoner is being detained in the county jail.

(iii) The amount of the prisoner's bond.

(iv) The date on which the prisoner began his or her period of detention.

(v) The name of the judge who ordered the prisoner to be detained.

(3) Subsection (2)(b) does not apply to a prisoner who is detained in the county jail in connection with a crime or an allegation of a crime in which the victim was a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual residing or having resided in the same household, or an individual with whom he or she has or has had a dating relationship as that term is defined in section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(4) After the chief circuit judge for the county in which the jail is located reviews the information presented by the sheriff pursuant to subsection (2), the chief circuit judge shall, for purposes of county jail population reduction, do both of the following:

(a) Classify prisoners who are serving sentences of imprisonment for conviction of crimes into 2 groups: those prisoners who, if released, would present a high risk to the public safety, and those who, if released, would not present a high risk to the public safety. The chief circuit judge shall also determine a minimum and a maximum percentage by which the sentences can be reduced. The sheriff shall reduce the sentences of all prisoners who, if released, would not present a high risk to the public safety by an equal percentage which is within the minimum and maximum percentages determined by the chief circuit judge.

(b) Review the list of prisoners housed in the county jail who are not serving a sentence for conviction of crimes and determine for each prisoner whether the release of that prisoner would or would not present a high risk to public safety. The chief circuit judge may do either or both of the following with regard to a prisoner whose release would not present a high risk to the public safety:

(i) Modify the bond of the prisoner, subject to any conditions reasonably necessary to ensure the appearance of the individual in court.



(ii) Release the prisoner subject to the condition that he or she be placed on electronic monitoring.

(5) The sentences of prisoners sentenced to and housed in the county jail after the fourteenth day of the county jail overcrowding state of emergency may continue to be reduced in the same manner as prescribed in subsections (2)(a) and (4)(a), but shall not be reduced after the county jail overcrowding state of emergency is ended or after the sheriff orders a sentence reduction pursuant to section 7, whichever occurs first.

(6) The department of corrections, in cooperation with the Michigan sheriffs' association, shall annually report to the chairpersons of the senate and house standing committees responsible for legislation concerning corrections. The report shall evaluate the effect on the overcrowding state of emergency procedures under this section.

This act is ordered to take immediate effect.

Approved January 13, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 543]**

**(SB 1616)**

AN ACT to amend 1939 PA 288, entitled “An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties,” by amending section 18m of chapter XIIA (MCL 712A.18m), as amended by 2004 PA 102.

*The People of the State of Michigan enact:*

CHAPTER XIIA

**712A.18m Payment of costs; minimum amounts; disposition; definitions.**

Sec. 18m. (1) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, and is ordered to pay any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, the court shall order the juvenile to pay costs of not less than the following amount, as applicable:

(a) \$68.00, if the juvenile is found to be within the court's jurisdiction for a felony.

(b) \$53.00, if the juvenile is found to be within the court's jurisdiction for a serious misdemeanor or a specified misdemeanor.

(c) \$48.00, if the juvenile is found to be within the court's jurisdiction for a misdemeanor not described in subdivision (b) or of an ordinance violation.

(2) Of the costs ordered to be paid, the clerk of the court shall pay to the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181, the applicable amount specified as a minimum cost in subsection (1).

(3) If a juvenile who is ordered to pay a minimum state cost under this section is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in section 29 of this chapter. A fine imposed for a felony, misdemeanor, or ordinance violation shall not be waived unless costs, other than the minimum state cost, are waived.

(4) On the last day of each month, the clerk of the court shall transmit the minimum state cost or portions of minimum state cost collected under this section to the department of treasury for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(5) As used in this section:

(a) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(b) "Minimum state cost" means the applicable minimum cost to be ordered under subsection (1).

(c) "Ordinance violation" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(d) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(e) "Specified misdemeanor" means that term as defined in section 1 of 1989 PA 196, MCL 780.901.

### **Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 1617.
- (b) Senate Bill No. 1618.
- (c) House Bill No. 5054.
- (d) House Bill No. 5055.

This act is ordered to take immediate effect.

Approved January 13, 2009.

Filed with Secretary of State January 13, 2009.

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**Compiler's note:** The bills referred to in enacting section 2 were enacted into law as follows:

Senate Bill No. 1617 was filed with the Secretary of State January 13, 2009, and became 2008 PA 544, Eff. Apr. 1, 2009.

Senate Bill No. 1618 was filed with the Secretary of State January 13, 2009, and became 2008 PA 545, Eff. Apr. 1, 2009.

House Bill No. 5054 was filed with the Secretary of State January 13, 2009, and became 2008 PA 546, Eff. Apr. 1, 2009.

House Bill No. 5055 was filed with the Secretary of State January 13, 2009, and became 2008 PA 547, Eff. Apr. 1, 2009.

**[No. 544]****(SB 1617)**

AN ACT to create the children's advocacy center act; to create the children's advocacy center fund; to provide for distributions from the fund; to prescribe the powers and duties of the fund administrator; and to prescribe the powers and duties of certain state officials.

*The People of the State of Michigan enact:*

**722.1041 Short title.**

Sec. 1. This act shall be known and may be cited as the "children's advocacy center act".

**722.1042 Definitions.**

Sec. 2. As used in this act:

(a) "Board" means the domestic violence prevention and treatment board created in section 2 of 1978 PA 389, MCL 400.1502.

(b) "Children's advocacy center" means an entity accredited as a child advocacy center by the national children's alliance or its successor agency.

(c) "Fund" means the children's advocacy center fund created in section 3.

**722.1043 Children's advocacy center fund; creation; deposit of money into fund; investment; money remaining in fund at close of fiscal year; department of human services as administrator.**

Sec. 3. (1) The children's advocacy center fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of human services shall be the administrator of the fund for auditing purposes.

**722.1044 Expenditures; limitation; annual audit and report.**

Sec. 4. (1) Money shall not be expended from the fund for the first year after the effective date of this act. Beginning 2 years after the effective date of this act, the board may expend money from the fund as appropriated. Money in the fund shall be expended only as follows:

(a) To provide investigative, assessment, counseling, support, and educational services to victims of child sexual abuse and their families through children's advocacy centers.

(b) To pay the actual and reasonable operating costs of children's advocacy centers.

(c) To provide training related to child sexual abuse for personnel employed or otherwise retained by children's advocacy centers.

(d) To improve the detection, investigation, treatment, and prevention of child sexual abuse through the coordinated activities of children's advocacy centers, medical care providers, crime victim organizations, and local, state, and federal law enforcement officials.

(e) To improve public awareness of child sexual abuse through the use of children's advocacy centers.

(f) To pay the actual and reasonable costs of administering the fund. Not more than 10% of distributions made in any fiscal year shall be used to pay administrative costs under this subdivision.

(2) The board shall require an annual audit of income and expenditures under this section and shall provide an annual report of incomes and expenditures to the secretary of the senate and the clerk of the house of representatives by February 1 of each year.

**Effective date.**

Enacting section 1. This act takes effect April 1, 2009.

**Conditional effective date.**

Enacting section 2. This act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 1616.
- (b) Senate Bill No. 1618.
- (c) House Bill No. 5054.
- (d) House Bill No. 5055.

This act is ordered to take immediate effect.

Approved January 13, 2009.

Filed with Secretary of State January 13, 2009.

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**Compiler's note:** The bills referred to in enacting section 2 were enacted into law as follows:

Senate Bill No. 1616 was filed with the Secretary of State January 13, 2009, and became 2008 PA 543, Eff. Apr. 1, 2009.

Senate Bill No. 1618 was filed with the Secretary of State January 13, 2009, and became 2008 PA 545, Eff. Apr. 1, 2009.

House Bill No. 5054 was filed with the Secretary of State January 13, 2009, and became 2008 PA 546, Eff. Apr. 1, 2009.

House Bill No. 5055 was filed with the Secretary of State January 13, 2009, and became 2008 PA 547, Eff. Apr. 1, 2009.

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**[No. 545]**

**(SB 1618)**

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending section 181 (MCL 600.181), as added by 2003 PA 97.

*The People of the State of Michigan enact:*

**600.181 Justice system fund; creation; use; disposition; investment; distributions.**

Sec. 181. (1) The justice system fund is created in the state treasury. The money in the fund shall be used as provided in this section.

(2) The state treasurer shall credit to the justice system fund deposits of proceeds from the collection of revenue from court assessments and costs designated by law for deposit

in the fund and shall credit all income from investment credited to the fund by the state treasurer. The state treasurer may invest money in the fund in any manner authorized by law for the investment of state money. However, an investment shall not interfere with any apportionment, allocation, or payment of money as required by this section. The unencumbered balance remaining in the fund at the end of a fiscal year shall remain in the fund and shall not revert to the general fund.

(3) Each fiscal year, the state treasurer shall distribute the proceeds of the fund monthly as follows:

(a) To the secondary road patrol and training fund created in section 629e of the Michigan vehicle code, 1949 PA 300, MCL 257.629e, an amount equal to \$10.00 multiplied by the number of civil infraction actions on which assessments are collected each month under section 629e or 907 of the Michigan vehicle code, 1949 PA 300, MCL 257.629e and 257.907.

(b) The balance of the fund remaining after the allocation in subdivision (a) shall be distributed as follows:

(i) To the highway safety fund created in section 629e of the Michigan vehicle code, 1949 PA 300, MCL 257.629e, 23.66% of the fund balance.

(ii) To the jail reimbursement program fund created in section 629e of the Michigan vehicle code, 1949 PA 300, MCL 257.629e, 11.84% of the fund balance.

(iii) To the Michigan justice training fund created in section 5 of 1982 PA 302, MCL 18.425, 11.84% of the fund balance.

(iv) To the secretary of the legislative retirement system for deposit with the state treasurer in the retirement fund created in the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, 1.10% of the fund balance.

(v) To the drug treatment courts fund created in section 185, 2.73% of the fund balance.

(vi) To the state forensic lab fund created in section 3 of the forensic laboratory funding act, 1994 PA 35, MCL 12.203, 5.35% of the fund balance.

(vii) To the state court fund created in section 151a, 12.69% of the fund balance.

(viii) To the court equity fund created in section 151b, 24.33% of the fund balance.

(ix) To the state treasurer for monitoring of collection and distribution of fund receipts, 0.98% of the fund balance.

(x) To the state court administrative office for management assistance and audit of trial court collections, 0.98% of the fund balance.

(xi) To the sexual assault victims' medical forensic intervention and treatment fund, 2.65% of the fund balance.

(xii) To the children's advocacy center fund created in section 3 of the children's advocacy center act, 1.85% of the fund balance.

### **Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 1616.

(b) Senate Bill No. 1617.

- (c) House Bill No. 5054.
- (d) House Bill No. 5055.

This act is ordered to take immediate effect.  
 Approved January 13, 2009.  
 Filed with Secretary of State January 13, 2009.

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**Compiler's note:** The bills referred to in enacting section 2 were enacted into law as follows:  
 Senate Bill No. 1616 was filed with the Secretary of State January 13, 2009, and became 2008 PA 543, Eff. Apr. 1, 2009.  
 Senate Bill No. 1617 was filed with the Secretary of State January 13, 2009, and became 2008 PA 544, Eff. Apr. 1, 2009.  
 House Bill No. 5054 was filed with the Secretary of State January 13, 2009, and became 2008 PA 546, Eff. Apr. 1, 2009.  
 House Bill No. 5055 was filed with the Secretary of State January 13, 2009, and became 2008 PA 547, Eff. Apr. 1, 2009.

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**[No. 546]**

**(HB 5054)**

AN ACT to create the sexual assault victims' medical forensic intervention and treatment fund; to provide for assessments against certain criminal defendants and certain juvenile offenders; to provide for expenditures from the fund; to provide for establishment of and funding for medical forensic intervention and treatment programs for victims of criminal sexual conduct; and to prescribe the powers and duties of certain state and local governmental officers and agencies.

*The People of the State of Michigan enact:*

**400.1531 Short title.**

Sec. 1. This act shall be known and may be cited as the "sexual assault victims' medical forensic intervention and treatment act".

**400.1532 Definitions.**

Sec. 2. As used in this act:

(a) "Board" means the domestic violence prevention and treatment board created in section 2 of 1978 PA 389, MCL 400.1502.

(b) "Criminal sexual conduct" means any of the following:

(i) A violation, attempted violation, or solicitation or conspiracy to commit a violation of section 520b, 520c, 520d, 520e, 520f, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, 750.520f, and 750.520g.

(ii) An offense originally charged as an offense described in subparagraph (i) that is subsequently reduced to an offense not included in subparagraph (i).

(c) "Fund" means the sexual assault victims' medical forensic intervention and treatment fund created in section 3.

(d) "Sexual assault counselor" means an employee of a sexual assault crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims or advocacy for victims.

(e) "Sexual assault crisis center" means a public or private agency that offers specialized direct assistance to victims, including, but not limited to:

(i) A telephone hotline that is operated 24 hours a day and answered by a sexual assault counselor or trained volunteer.

(ii) Information and referral services.

(iii) Crisis intervention services.

(iv) Advocacy services.

(v) Service coordination.

(vi) Community awareness or education programs on sexual assault services.

(f) “Sexual assault evidence kit” means that term as defined in section 21527 of the public health code, 1978 PA 368, MCL 333.21527.

(g) “Victim” means a person who consults a sexual assault counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by sexual abuse or sexual violence.

#### **400.1533 Sexual assault victims’ medical forensic intervention and treatment fund; creation; deposit of money into fund; interest and earnings; money in fund at close of fiscal year; department of human services as administrator.**

Sec. 3. (1) The sexual assault victims’ medical forensic intervention and treatment fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of human services shall be the administrator of the fund for auditing purposes.

#### **400.1535 Expenditures; limitation; award of grants and contracts; manner; annual audit and report; rules.**

Sec. 5. (1) Money shall not be expended from the sexual assault victims’ medical forensic intervention and treatment fund created in section 3 for the first year after the effective date of this act. Beginning 2 years after the effective date of this act, the board may expend money from the fund, as appropriated. Money in the fund shall be expended only as follows:

(a) At least 80% of the money shall be distributed to entities that do all of the following:

(i) Perform the procedures required by sexual assault evidence kits.

(ii) Provide specialized assistance to victims.

(iii) Operate under the auspices of or in partnership with a local sexual assault crisis center.

(iv) Comply with the standards of training and practice of the international association of forensic nurse examiners or a similar organization designated by the board in consultation with the department of human services.

(v) Provide access to medical forensic intervention and treatment services 24 hours a day.

(b) Not more than 15% of the money may be expended for medical forensic intervention related training and technical assistance for staff members and for needs assessment.

(c) Not more than 10% of the money may be expended for administrative costs incurred by the board in implementing and administering this act.

(2) The board shall distribute money under subsection (1) by awarding grants and contracts in a manner that reflects the population, geographic area, and rural and urban

diversity of this state using criteria developed by the board in consultation with the department of human services.

(3) The board may require an annual audit of income and expenditures under this section and shall provide an annual report of incomes and expenditures to the secretary of the senate and the clerk of the house of representatives by February 1 of each year.

(4) The board may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

**Effective date.**

Enacting section 1. This act takes effect April 1, 2009.

**Conditional effective date.**

Enacting section 2. This act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 1616.
- (b) Senate Bill No. 1617.
- (c) Senate Bill No. 1618.
- (d) House Bill No. 5055.

This act is ordered to take immediate effect.

Approved January 13, 2009.

Filed with Secretary of State January 13, 2009.

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**Compiler's note:** The bills referred to in enacting section 2 were enacted into law as follows:  
Senate Bill No. 1616 was filed with the Secretary of State January 13, 2009, and became 2008 PA 543, Eff. Apr. 1, 2009.  
Senate Bill No. 1617 was filed with the Secretary of State January 13, 2009, and became 2008 PA 544, Eff. Apr. 1, 2009.  
Senate Bill No. 1618 was filed with the Secretary of State January 13, 2009, and became 2008 PA 545, Eff. Apr. 1, 2009.  
House Bill No. 5055 was filed with the Secretary of State January 13, 2009, and became 2008 PA 547, Eff. Apr. 1, 2009.

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**[No. 547]**

**(SB 5055)**

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set



forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 1j of chapter IX (MCL 769.1j), as added by 2003 PA 70.

*The People of the State of Michigan enact:*

## CHAPTER IX

### **769.1j Court ordered fine, costs, or assessments; minimum amounts; definitions.**

Sec. 1j. (1) Beginning October 1, 2003, if the court orders a person convicted of an offense to pay any combination of a fine, costs, or applicable assessments, the court shall order that the person pay costs of not less than the following amount, as applicable:

(a) \$68.00, if the defendant is convicted of a felony.

(b) \$53.00, if the defendant is convicted of a serious misdemeanor or a specified misdemeanor.

(c) \$48.00, if the defendant is convicted of a misdemeanor not described in subdivision (b).

(2) Of the costs ordered to be paid by a person convicted of an offense, the clerk shall pay to the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181, the applicable amount specified as a minimum cost under subsection (1).

(3) Payment of the minimum state cost is a condition of probation under chapter XI of this act.

(4) If a defendant who is ordered to pay a minimum state cost under subsection (1) posts a cash bond or bail deposit in connection with the case, the court shall order that the minimum state cost be collected out of the bond or deposit as provided in section 15 of chapter V of this act or section 6 or 7 of 1966 PA 257, MCL 780.66 and 780.67.

(5) If a defendant who is ordered to pay a minimum state cost under this section is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same criminal prosecution, money collected from that person for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in section 22 of chapter XV. A fine imposed for a felony, misdemeanor, or ordinance violation shall not be waived unless costs, other than the minimum cost ordered under subsection (2), are waived.

(6) On the last day of each month, the clerk of the court shall transmit the minimum state cost or portions of minimum state cost collected under this section to the department of treasury for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(7) As used in this section:

(a) “Felony” means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(b) “Minimum state cost” means the applicable minimum cost to be ordered for a conviction under subsection (1).

(c) “Serious misdemeanor” means that term as defined in section 61 of the William Van Regenmorter crime victim’s rights act, 1985 PA 87, MCL 780.811.

(d) “Specified misdemeanor” means that term as defined in section 1 of 1989 PA 196, MCL 780.901.

**Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 1616.
- (b) Senate Bill No. 1617.
- (c) Senate Bill No. 1618.
- (d) House Bill No. 5054.

This act is ordered to take immediate effect.

Approved January 13, 2009.

Filed with Secretary of State January 13, 2009.

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**Compiler's note:** The bills referred to in enacting section 2 were enacted into law as follows:

Senate Bill No. 1616 was filed with the Secretary of State January 13, 2009, and became 2008 PA 543, Eff. Apr. 1, 2009.

Senate Bill No. 1617 was filed with the Secretary of State January 13, 2009, and became 2008 PA 544, Eff. Apr. 1, 2009.

Senate Bill No. 1618 was filed with the Secretary of State January 13, 2009, and became 2008 PA 545, Eff. Apr. 1, 2009.

House Bill No. 5054 was filed with the Secretary of State January 13, 2009, and became 2008 PA 546, Eff. Apr. 1, 2009.

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**[No. 548]**

**(HB 5977)**

AN ACT to amend 1995 PA 24, entitled "An act to promote economic growth and job creation within this state; to create and regulate the Michigan economic growth authority; to prescribe the powers and duties of the authority and of state and local officials; to assess and collect a fee; to approve certain plans and the use of certain funds; and to provide qualifications for and determine eligibility for tax credits and other incentives for authorized businesses and for qualified taxpayers," by amending section 6 (MCL 207.806), as amended by 2008 PA 262.

*The People of the State of Michigan enact:*

**207.806 Michigan economic growth authority; powers.**

Sec. 6. The authority shall have powers necessary or convenient to carry out and effectuate the purpose of this act, including, but not limited to, the following:

- (a) To authorize eligible businesses to receive tax credits to foster job creation in this state.
- (b) To determine which businesses qualify for tax credits under this act.
- (c) To determine the amount and duration of tax credits authorized under this act.
- (d) To issue certificates and enter into written agreements specifying the conditions under which tax credits are authorized and the circumstances under which those tax credits may be reduced or terminated.
- (e) To charge and collect reasonable administrative fees.
- (f) To delegate to the chairperson of the authority, staff, or others the functions and powers it considers necessary and appropriate to administer the programs under this act.
- (g) To assist an eligible business to obtain the benefits of a tax credit, incentive, or inducement program provided by this act or by law.

(h) To determine the eligibility of and issue certificates to certain qualified taxpayers for credits allowed under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, and to develop the application process and necessary forms to claim the credit under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431. The Michigan economic growth authority annually shall prepare and submit to the house of representatives and senate committees responsible for tax policy and economic development issues a report on the credits under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431. The report shall include, but is not limited to, all of the following:

(i) A listing of the projects under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, that were approved in the previous calendar year.

(ii) The total amount of eligible investment approved under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, in the previous calendar year.

(i) To approve the capture of school operating taxes and work plans as provided in sections 13 and 15 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2663 and 125.2665.

(j) To determine the eligibility of and issue certificates to certain qualified taxpayers for credits allowed under section 407 of the Michigan business tax act, 2007 PA 36, MCL 208.1407.

(k) To determine the eligibility of and issue certificates to certain taxpayers for credits allowed under sections 431a and 431b of the Michigan business tax act, 2007 PA 36, MCL 208.1431a and 208.1431b.

(l) To determine the eligibility of and issue certificates to certain taxpayers for credits allowed under sections 432 to 432d of the Michigan business tax act, 2007 PA 36, MCL 208.1432 to 208.1432d.

(m) To determine the eligibility of and issue certificates to certain taxpayers for credits allowed under section 434 of the Michigan business tax act, 2007 PA 36, MCL 208.1434.

This act is ordered to take immediate effect.

Approved January 13, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 549]**

**(SB 861)**

AN ACT to authorize the creation of promise authorities and the implementation of promise zone development plans; to prescribe the powers and duties of promise zone authorities; to provide for the capture and disbursement of certain tax revenue; and to prescribe powers and duties of certain state and local officials.

*The People of the State of Michigan enact:*

**390.1661 Short title.**

Sec. 1. This act shall be known and may be cited as the “Michigan promise zone authority act”.

**390.1663 Definitions.**

Sec. 3. As used in this act:

(a) “Authority” means a promise zone authority created under this act.

(b) “Board” means the governing body of an authority.

(c) “Eligible entity” means a city, township, county, local school district, or intermediate school district, in which the percentage of families with children under age 18 that are living at or below the federal poverty level is greater than or equal to the state average of families with children under age 18 living at or below the federal poverty level, as determined by the department of treasury.

(d) “Federal poverty level” means the poverty guidelines published annually in the federal register by the United States department of health and human services under its authority to revise the poverty line under section 673(2) of subtitle B of title VI of the omnibus budget reconciliation act of 1981, Public Law 97-35, 42 USC 9902.

(e) “Governing body” means the elected body of an eligible entity having legislative powers.

(f) “Nonpublic high school” means a high school operated by a nonpublic school that includes grades 9 to 12 or 10 to 12 and that awards a high school diploma. Nonpublic high school also includes a general education development test.

(g) “Nonpublic school” means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(h) “Promise of financial assistance” means a commitment by an eligible entity to provide financial resources for public or private postsecondary education to eligible students living in a promise zone and who have graduated from a public high school or nonpublic high school located within that promise zone.

(i) “Promise zone” means that area created by a governing body under this act.

(j) “Promise zone development plan” means that plan developed by an authority under this act that will ensure that the financial resources are available to adequately fund the promise of financial assistance.

(k) “Public high school” means a public school that includes grades 9 to 12 or 10 to 12 and that awards a high school diploma.

(l) “Public school” means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(m) “School district” means that term as defined in the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(n) “State education tax” means the tax levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

**390.1665 Promise zone authority; creation; authority as body politic; powers; board; membership; appointment; terms; reimbursement for expenses; election of chairperson; “chief executive officer” defined; oath; proceedings and rules subject to open meetings act; removal of board member; writings subject to the freedom of information act.**

Sec. 5. (1) If the department of treasury certifies the eligibility of a governing body to establish a promise zone and the governing body, by resolution, establishes a promise zone under the Michigan promise zone act, the governing body shall, by resolution, create a promise zone authority.

(2) An authority is a public body corporate that may sue and be sued in any court of this state. An authority possesses all the powers necessary to carry out its purpose. The enumeration of a power in this act shall not be construed as a limitation upon the general powers of an authority.

(3) An authority shall be under the supervision and control of a board consisting of 11 members. Nine members shall be appointed by the chief executive officer of the eligible entity with the advice and consent of the governing body. One member shall be appointed by the senate majority leader. One member shall be appointed by the speaker of the house of representatives. Not more than 3 members shall be government officials. One member shall be a representative of the public school community. Of the members first appointed, an equal number of the members, as near as is practicable, shall be appointed for 1 year, 2 years, 3 years, and 4 years. A member shall hold office until the member's successor is appointed. After the initial appointment, each member shall serve for a term of 4 years. An appointment to fill a vacancy shall be made by the chief executive officer of the eligible entity for the unexpired term only. Members of the board shall serve without compensation, but may be reimbursed for actual and necessary expenses. The chairperson of the board shall be elected by the board. As used in this subsection, for a local school district or an intermediate school district, "chief executive officer" means the superintendent of the local school district or intermediate school district.

(4) Before assuming the duties of office, a member shall qualify by taking and subscribing to the constitutional oath of office.

(5) The proceedings and rules of the board are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The board shall adopt rules governing its procedure and the holding of regular meetings, subject to the approval of the governing body. Special meetings may be held if called in the manner provided in the rules of the board.

(6) After having been given notice and an opportunity to be heard, a member of the board may be removed for cause by the governing body.

(7) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

### **390.1667 Promise zone development plan; provisions; funding for out-of-state postsecondary institution prohibited; submission of plan or amendments to department of treasury; approval or written notice of deficiencies.**

Sec. 7. (1) A promise zone authority created under section 5 shall prepare a promise zone development plan.

(2) The promise zone development plan shall include, but is not limited to, all of the following:

(a) A complete description of the proposed promise of financial assistance. The proposed promise of financial assistance shall include, but is not limited to, a promise of financial assistance to all students residing within the promise zone and who graduate from a public high school or nonpublic high school located within that promise zone. The proposed promise of financial assistance shall, at a minimum, provide funding sufficient to provide an eligible student the tuition necessary to obtain an associate degree or its equivalent at a community or junior college in this state or combination of community or junior colleges in this state and, at most, provide funding sufficient to provide an eligible student the tuition necessary to obtain a bachelor's degree or its equivalent at a public postsecondary institution in this state or combination of public postsecondary institutions in this state, subject to any limitations authorized under this section. The proposed promise of financial assistance may also, at

most, provide funding for an eligible student to attend a private college in this state in an amount not to exceed the average tuition necessary to obtain a bachelor's degree at all public universities in this state. The proposed promise of financial assistance may also authorize the expenditure of funds for educational improvement activities designed to increase readiness for postsecondary education at public schools located in the promise zone.

(b) A complete description of any limitation on the promise of financial assistance; if the promise of financial assistance will be prorated based on the number of years the student has resided within the promise zone; if the promise of financial assistance will be restricted to students who have resided within or attended a public high school or nonpublic high school within the promise zone for a minimum number of years; if the promise of financial assistance is predicated on the student maintaining a minimum college grade point average and carrying a minimum college credit hour classload; or if the promise of financial assistance is restricted to attendance at 1 or more public or private postsecondary institutions in this state.

(c) A requirement that graduates of a public high school or nonpublic high school exhaust all other known and available restricted grants for tuition and fees for postsecondary education provided by a federal, state, or local governmental entity, as determined by the board.

(d) How the funds necessary to accomplish the promise of financial assistance will be raised. Any amount received under the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772, shall not be included as a method of raising the necessary funds. The promise zone development plan shall be financed from 1 or more of the following sources:

(i) Donations.

(ii) Revenues.

(iii) Money obtained from other sources approved by the governing body or otherwise authorized by law.

(e) An actuarial model of how much the proposed plan is estimated to cost, based on actuarial formulas developed by the department of treasury.

(3) The proposed promise of financial assistance under subsection (2) shall not include funding for attendance at a public or private postsecondary institution not located in this state.

(4) The board shall submit the promise zone development plan to the department of treasury promptly after its adoption. The promise zone development plan shall be published on the website of the eligible entity that established the promise zone.

(5) The department of treasury shall review the promise zone development plan submitted under subsection (4). Not more than 60 days after receipt of a promise zone development plan submitted under subsection (4), the department of treasury shall either approve the promise zone development plan or provide a written notice of deficiencies. If the department of treasury does not approve a promise zone development plan submitted under subsection (4) or provide a written notice of deficiencies within 60 days, the promise zone development plan shall be considered approved. If a promise zone development plan is approved, the department of treasury shall certify that the promise zone development plan meets all requirements under this act and is sustainable.

(6) The department of treasury shall review any proposed amendments to a promise zone development plan. Not more than 60 days after receipt of proposed amendments to a promise zone development plan, the department of treasury shall either approve the proposed amendments or provide a written notice of deficiencies. If the department of treasury does not approve proposed amendments or provide a written notice of deficiencies within 60 days, the proposed amendments shall be considered approved. If proposed amendments are approved, the department of treasury shall certify that the amendments meet all requirements under this act.

**390.1669 Cause of action not created.**

Sec. 9. The establishment of a promise zone development plan does not create a cause of action in law or in equity against this state, an eligible entity, or a promise zone authority, if the proposed promise of financial assistance set forth in the promise zone development plan is not paid to an eligible student.

**390.1671 Director; treasurer; employment; compensation; bond; powers and duties; acting director; secretary; legal counsel; other personnel; deposit of money; administrative costs; limitation.**

Sec. 11. (1) The board may employ and fix the compensation of a director. The director shall serve at the pleasure of the board. A member of the board is not eligible to hold the position of director. Before beginning his or her duties, the director shall take and subscribe to the constitutional oath and furnish bond by posting a bond in the sum determined in the resolution establishing the authority payable to the authority for use and benefit of the authority, approved by the board, and filed with the clerk of the eligible entity. The premium on the bond shall be considered an operating expense of the authority, payable from funds available to the authority for expenses of operation. The director shall be the chief executive officer of the authority.

(2) Subject to the approval of the board, the director shall supervise and be responsible for implementing the promise zone development plan and the performance of the functions of the authority in the manner authorized by this act. The director shall attend the meetings of the board and shall provide to the board, the governing body, and the chief executive officer of the eligible entity a regular report covering the activities and financial condition of the authority. If the director is absent or disabled, the board may designate a qualified person as acting director to perform the duties of the office. Before beginning his or her duties, the acting director shall take and subscribe to the oath, and furnish bond, as required of the director. The director shall furnish the board with information or reports governing the operation of the authority as the board requires.

(3) The board may employ and fix the compensation of a treasurer, who shall keep the financial records of the authority and who, together with the director, shall approve all vouchers for the expenditure of funds of the authority. The treasurer shall perform all duties delegated to him or her by the board and shall furnish a bond in an amount prescribed by the board.

(4) The board may employ and fix the compensation of a secretary, who shall maintain custody of the official seal and of records, books, documents, or other papers not required to be maintained by the treasurer. The secretary shall attend meetings of the board and keep a record of its proceedings and shall perform other duties delegated by the board.

(5) The board may retain legal counsel to advise the board in the proper performance of its duties.

(6) The board may employ other personnel considered necessary by the board.

(7) Money received by the authority shall immediately be deposited to the credit of the authority, subject to disbursement under this act.

(8) The authority shall not expend more than 15% of the proposed annual budget for administrative costs.

**390.1673 Board; powers.**

Sec. 13. The board may do any of the following:

(a) Prepare an analysis of the postsecondary educational opportunities for the residents of the promise zone.

(b) Study and analyze the need for financial resources to provide postsecondary educational opportunities for residents of the promise zone.

(c) Acquire by purchase or otherwise, on terms and conditions and in a manner the authority considers proper, or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in the property, that the authority determines is reasonably necessary to achieve the purposes of this act, and grant or acquire licenses, easements, and options.

(d) Fix, charge, and collect fees, rents, and charges for the use of any facility, building, or property under its control or any part of the facility, building, or property.

(e) Lease, in whole or in part, any facility, building, or property under its control.

(f) Solicit and accept grants and donations of money, property, labor, or other things of value from a public or private source.

### **390.1675 Budget.**

Sec. 15. The director of the authority shall submit a budget to the board for the operation of the authority for each fiscal year before the beginning of the fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. After review by the board, the budget shall be submitted to the governing body. The governing body must approve the budget before the board may adopt the budget. Unless authorized by the governing body, funds of the eligible entity shall not be included in the budget of the authority.

### **390.1677 Capture of state education tax; determination of base year; payments.**

Sec. 17. (1) The authority shall determine the base year for calculating the amount of incremental growth for the capture of the state education tax as provided in this section. The base year is the amount of revenue received from the collection of the state education tax in the promise zone in the year immediately preceding the year in which an authority makes its initial tuition payment in accordance with the promise of financial assistance or the amount of revenue received from the collection of the state education tax in the promise zone in any 1 of the 3 immediately succeeding years, whichever is less.

(2) If the authority continues to make annual payments in accordance with the promise of financial assistance, in the year immediately succeeding the base year determined in subsection (1) and each year thereafter, this state shall capture 1/2 of the increase in revenue, if any, from the collection of the state education tax. This state shall not capture any revenue from the collection of the state education tax under this act if that revenue is subject to capture under any other law of this state. Proceeds from the capture of the state education tax under this section shall be deposited in the state treasury and credited to a restricted fund to be used solely for the purposes of this act.

(3) If the authority continues to make annual tuition payments in accordance with the promise of financial assistance, 2 years after the authority's initial payment of financial assistance and each year thereafter, this state shall pay to the authority the state education tax captured under subsection (2). If the boundaries of 2 or more promise zones created under this act overlap, payments under this section shall only be made to the first authority eligible for payment under this subsection.

(4) If at any time the authority does not make annual tuition payments in accordance with the promise for financial assistance, any amount captured from that promise zone in the restricted fund created under subsection (2) shall be paid into the school aid fund established in section 11 of article IX of the state constitution of 1963.



(5) For purposes of this section, payments under this section shall not be included in determining payments for financial assistance in the immediately preceding year.

**390.1679 Department of treasury; assumption of operational control; dissolution; resolution.**

Sec. 19. (1) The department of treasury shall oversee the operations of any promise zone authority or board created under this act. If the department of treasury determines that the actions of a promise zone authority or board are not in accordance with the promise zone development plan, the department of treasury may assume operational control of that promise zone authority or board.

(2) An authority that has completed the purposes for which it was organized shall be dissolved by resolution of the governing body. The property and assets of the authority remaining after the satisfaction of the obligations of the authority belong to the eligible entity.

**Conditional effective date.**

Enacting section 1. This act does not take effect unless House Bill No. 5375 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 13, 2009.

Filed with Secretary of State January 13, 2009.

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**Compiler's note:** House Bill No. 5375, referred to in enacting section 1, was filed with the Secretary of State January 13, 2009, and became 2008 PA 550, Imd. Eff. Jan. 13, 2009.

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**[No. 550]**

**(HB 5375)**

AN ACT to authorize the creation of promise zones; and to prescribe powers and duties of certain state and local officials.

*The People of the State of Michigan enact:*

**390.1641 Short title.**

Sec. 1. This act shall be known and may be cited as the "Michigan promise zone act".

**390.1643 Definitions.**

Sec. 3. As used in this act:

(a) "Eligible entity" means a city, township, county, local school district, or intermediate school district, in which the percentage of families with children under age 18 that are living at or below the federal poverty level is greater than or equal to the state average of families with children under age 18 living at or below the federal poverty level, as determined by the department of treasury.

(b) "Federal poverty level" means the poverty guidelines published annually in the federal register by the United States department of health and human services under its authority to revise the poverty line under section 673(2) of subtitle B of title VI of the omnibus budget reconciliation act of 1981, Public Law 97-35, 42 USC 9902.

(c) “Governing body” means the elected body of an eligible entity having legislative powers.

(d) “Nonpublic high school” means a high school operated by a nonpublic school that includes grades 9 to 12 or 10 to 12 and that awards a high school diploma. Nonpublic high school also includes a general education development test.

(e) “Nonpublic school” means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(f) “Promise of financial assistance” means a commitment by an eligible entity to provide financial resources for public or private postsecondary education to eligible students living in a promise zone and who have graduated from a public high school or nonpublic high school located within that promise zone.

(g) “Promise zone” means that area created by a governing body under this act.

(h) “Public high school” means a public school that includes grades 9 to 12 or 10 to 12 and that awards a high school diploma.

(i) “Public school” means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(j) “School district” means that term as defined in the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(k) “State education tax” means the tax levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

**390.1645 Promise zone; resolution; public hearing; application to department of treasury; review; certification of eligibility; establishment; election by local school district to not participate; establishment of separate promise zone.**

Sec. 5. (1) If a governing body determines that it is necessary for the best interests of the public to promote access to postsecondary education, the governing body may, by resolution, declare its intention to establish a promise zone.

(2) The governing body shall set a date for a public hearing on the adoption of a proposed resolution establishing the promise zone. Notice of the public hearing shall be published twice in a newspaper of general circulation in the eligible entity, not less than 20 or more than 40 days before the date of the hearing. Notice of the hearing shall be posted in at least 20 conspicuous and public places in the eligible entity not less than 20 days before the hearing. The notice shall state the date, time, and place of the hearing and shall describe the proposed promise zone, the details of the promise of financial assistance, and the criteria for eligibility to receive that financial assistance.

(3) Not less than 30 days after the public hearing, if the governing body of the eligible entity intends to proceed with the establishment of the promise zone, it shall submit an application to the department of treasury seeking approval to establish a promise zone.

(4) The department of treasury shall review the application submitted under subsection (3) and shall certify that the governing body of the eligible entity is eligible to establish a promise zone under this act. The department of treasury shall review the applications submitted under subsection (3) on a first-come first-served basis and shall not certify more than 10 governing bodies of eligible entities as eligible to establish a promise zone under this act.

(5) If the department of treasury certifies that the governing body of the eligible entity is eligible to create a promise zone, the governing body shall, by resolution, establish a promise zone.

(6) Not more than 90 days after the governing body approves a resolution to establish a promise zone, a local school district may by resolution elect not to participate in the establishment of a promise zone by the governing body of the eligible entity in which the local school district is located. The resolution shall include a provision that the local school district will establish a separate promise zone under this act. If the local school district does not establish a promise zone within a reasonable period of time, the department of treasury may include that local school district in the promise zone established by the eligible entity in which the local school district is located.

### **390.1647 Cause of action not created.**

Sec. 7. The establishment of a promise zone does not create a cause of action in law or in equity against this state or an eligible entity.

### **390.1649 Creation of promise zone by ineligible entity.**

Sec. 9. (1) A city, township, county, local school district, or intermediate school district that is not an eligible entity may create a promise zone under this act, but shall not capture revenue from the state education tax under the Michigan promise zone authority act. The governing body of a city, township, county, local school district, or intermediate school district that is not an eligible entity shall not be considered under section 5 in determining the number of governing bodies of eligible entities eligible to establish a promise zone under this act.

(2) This section shall not prevent an eligible entity located within a city, township, county, local school district, or intermediate school district that is not an eligible entity from creating a promise zone under this act and capturing revenue from the state education tax under the Michigan promise zone authority act.

### **Conditional effective date.**

Enacting section 1. This act does not take effect unless Senate Bill No. 861 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 13, 2009.

Filed with Secretary of State January 13, 2009.

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**Compiler's note:** Senate Bill No. 861, referred to in enacting section 1, was filed with the Secretary of State January 13, 2009, and became 2008 PA 549, Imd. Eff. Jan. 13, 2009.

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**[No. 551]**

**(HB 5008)**

AN ACT to enact the uniform securities act (2002) relating to the issuance, offer, sale, or purchase of securities; to prohibit fraudulent practices in relation to securities; to establish civil and criminal sanctions for violations of the act and civil sanctions for violation of the rules promulgated pursuant to the act; to require the registration of broker-dealers, agents, investment advisers, and securities; to make uniform the law with reference to securities; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

ARTICLE 1

GENERAL PROVISIONS

**451.2101 Short title.**

Sec. 101. This act shall be known and may be cited as the “uniform securities act (2002)”.

**451.2102 Definitions; A to G.**

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

(a) “Administrator” means the office of financial and insurance regulation of the department of energy, labor, and economic growth.

(b) “Agent” means an individual other than a broker-dealer who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities. The term does not include a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, unless the individual otherwise comes within the term. The term does not include an individual excluded by rule or order under this act. The term does not include a person acting solely as a finder and registered as a broker-dealer under this act or acting as a finder in a transaction exempt under section 202(1)(r).

(c) “Bank” means any of the following:

(i) A banking institution organized under the laws of the United States.

(ii) A member bank of the federal reserve system.

(iii) Any other banking institution that meets all of the following:

(A) It is doing business under the laws of a state or of the United States.

(B) A substantial portion of its business consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to 12 USC 92a.

(C) It is supervised and examined by a state or federal agency having supervision over banks.

(D) It is not operated for the purpose of evading this act.

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (i), (ii), or (iii).

(d) “Broker-dealer” means a person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account. The term does not include any of the following:

(i) An agent.

(ii) An issuer.

(iii) A bank or savings institution if its activities as a broker-dealer are limited to those specified in section 3(a)(4) and 3(a)(5) of the securities exchange act of 1934, 15 USC 78c, or a bank that satisfies the conditions described in section 3(a)(4)(E) of the securities exchange act of 1934, 15 USC 78c.

(iv) An international banking institution.

(v) A person excluded by rule or order under this act.

(e) “Depository institution” means a bank; or a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by federal statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law; or a bank that does not receive deposits because of a limitation in its charter, articles of incorporation, or articles of association. The term does not include any of the following:

(i) An insurance company or other organization primarily engaged in the business of insurance.

(ii) A Morris Plan bank.

(iii) An industrial loan company that is not an insured depository institution, as that term is defined in section 3(c)(2) of the federal deposit insurance act, 12 USC 1813(c)(2).

(f) “Federal covered investment adviser” means a person registered under the investment advisers act of 1940.

(g) “Federal covered security” means a security that is, or upon completion of a transaction will be, a covered security under section 18(b) of the securities act of 1933, 15 USC 77r, or rules or regulations adopted under that provision.

(h) “Filing” means the receipt under this act of a record by the administrator or a designee of the administrator.

(i) “Finder” means a person who, for consideration, participates in the offer to sell, sale, or purchase of securities by locating, introducing, or referring potential purchasers or sellers. Finder does not include a person whose actions are solely incidental to a transaction exempt pursuant to section 202(1)(r). The administrator may by rule or order exclude other persons from this definition.

(j) “Fraud,” “deceit,” and “defraud” include, but are not limited to, common law deceit.

(k) “Guaranteed” means guaranteed as to payment of all principal and all interest.

#### **451.2102a Definitions; I.**

Sec. 102a. As used in this act, unless the context otherwise requires:

(a) “Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

(i) A depository institution or international banking institution.

(ii) An insurance company.

(iii) A separate account of an insurance company.

(iv) An investment company as defined in the investment company act of 1940.

(v) A broker-dealer registered under the securities exchange act of 1934.

(vi) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000.00 or its investment decisions are made by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company.

(vii) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000.00 or its investment

decisions are made by a duly designated public official or by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company.

(vii) A trust, if it has total assets in excess of \$10,000,000.00, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (vi) or (vii), regardless of size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans.

(ix) An organization described in section 501(c)(3) of the internal revenue code, 26 USC 501, a corporation, Massachusetts or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000.00.

(x) A small business investment company licensed by the small business administration under section 301(c) of the small business investment act of 1958, 15 USC 681, with total assets in excess of \$10,000,000.00.

(xi) A private business development company as defined in section 202(a)(22) of the investment advisers act of 1940, 15 USC 80b-2, with total assets in excess of \$10,000,000.00.

(xii) A federal covered investment adviser acting for its own account.

(xiii) A “qualified institutional buyer” as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the securities act of 1933, 17 CFR 230.144A.

(xiv) A “major U.S. institutional investor” as defined in rule 15a-6(b)(4)(i) adopted under the securities exchange act of 1934, 17 CFR 240.15a-6(b)(4)(i).

(xv) Any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000.00 not organized for the specific purpose of evading this act.

(xvi) Any other person specified by rule or order under this act.

(b) “Insurance company” means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(c) “Insured” means insured as to payment of all principal and all interest.

(d) “International banking institution” means an international financial institution of which the United States is a member and whose securities are exempt from registration under the securities act of 1933.

(e) “Investment adviser” means a person that, for compensation, engages in the business of advising others, either directly 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 a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include any of the following:

(i) An investment adviser representative.

(ii) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person’s profession.

(iii) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice.

(iv) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation.

(v) A federal covered investment adviser.

(vi) A depository institution.

(vii) Any other person that is excluded by the investment advisers act of 1940 from the definition of investment adviser.

(viii) Any other person excluded by rule or order under this act.

(ix) A finder registered as a broker-dealer under this act.

(f) “Investment adviser representative” means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who meets any of the following:

(i) Performs only clerical or ministerial acts.

(ii) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and does not receive special compensation for investment advisory services.

(iii) Is employed by or associated with a federal covered investment adviser, unless the individual meets any of the following:

(A) Has a “place of business” in this state as that term is defined by rule adopted under section 203A of the investment advisers act of 1940, 15 USC 80b-3a, and is an “investment adviser representative” as that term is defined by rule adopted under section 203A of the investment advisers act of 1940, 15 USC 80b-3a.

(B) Has a “place of business” in this state as that term is defined by rule adopted under section 203A of the investment advisers act of 1940, 15 USC 80b-3a, and is not a “supervised person” as that term is defined in section 202(a)(25) of the investment advisers act of 1940, 15 USC 80b-2.

(iv) Is excluded by rule or order under this act.

(g) “Issuer” means a person that issues or proposes to issue a security, subject to the following:

(i) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions, is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(ii) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used, or to which the property or equipment is or will be leased or conditionally sold, or that is otherwise contractually responsible for assuring payment of the certificate.

(iii) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

**451.2102b Definitions; N to R.**

Sec. 102b. As used in this act, unless the context otherwise requires:

(a) “Nonissuer transaction” or “nonissuer distribution” means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(b) “Offer to purchase” includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of title I of the securities exchange act of 1934, 15 USC 78n.

(c) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, limited liability partnership, association, joint venture, or government; a governmental subdivision, agency, or instrumentality; a public corporation; or any other legal or commercial entity.

(d) “Place of business” of a broker-dealer, an investment adviser, or a federal covered investment adviser means any of the following:

(i) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice, or solicits, meets with, or otherwise communicates with customers or clients.

(ii) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice, or solicits, meets with, or otherwise communicates with customers or clients.

(e) “Predecessor act” means former 1964 PA 265.

(f) “Price amendment” means the amendment to a registration statement filed under the securities act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the securities act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(g) “Principal place of business” of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(h) “Record,” except in the phrases “of record,” “official record,” and “public record,” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**451.2102c Definitions; S.**

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

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

(i) A security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value.

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

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



(b) “Securities and exchange commission” means the United States securities and exchange commission.

(c) “Security” means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest in or based on the value of that put, call, straddle, option, or privilege on that security, certificate of deposit, or group or index of securities; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; an investment in a viatical or life settlement agreement; or, in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the following apply to the term security:

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

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

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

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

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

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

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

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

(iv) The term does not include an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974.

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

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

(d) “Self-regulatory organization” means a national securities exchange registered under the securities exchange act of 1934, a national securities association of broker-dealers registered under the securities exchange act of 1934, a clearing agency registered under the securities exchange act of 1934, or the municipal securities rule-making board established under the securities exchange act of 1934.

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

(i) To execute or adopt a tangible symbol.

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

(f) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

#### **451.2103 Additional definitions.**

Sec. 103. (1) Subject to subsection (2), as used in this act:

(a) “Commodity exchange act” means the commodity exchange act, 7 USC 1 to 27f.

(b) “Electronic signatures in global and national commerce act” means the electronic signatures in global and national commerce act, 15 USC 7001 to 7031.

(c) “Employee retirement income security act of 1974” means the employee retirement income security act of 1974, Public Law 93-406.

(d) “Internal revenue code” means the internal revenue code of 1986, 26 USC 1 to 9833.

(e) “Investment advisers act of 1940” means the investment advisers act of 1940, 15 USC 80b-1 to 80b-21.

(f) “Investment company act of 1940” means the investment company act of 1940, 15 USC 80a-1 to 80a-64.

(g) “National housing act” means the national housing act, 12 USC 1701 to 1750g.

(h) “Public utility holding company act of 1935” means the public utility holding company act of 1935, 15 USC 79 to 79z-6.

(i) “Securities act of 1933” means the securities act of 1933, 15 USC 77a to 77aa.

(j) “Securities exchange act of 1934” means the securities exchange act of 1934, 15 USC 78a to 78nn.

(k) “Securities investor protection act of 1970” means the securities investor protection act of 1970, 15 USC 78aaa to 78lll.

(l) “Securities litigation uniform standards act of 1998” means the securities litigation uniform standards act of 1998, Public Law 105-353, 112 Stat. 3227.

(m) “Small business investment act of 1958” means the small business investment act of 1958, Public Law 85-699.

(2) A reference in this act to a federal statute defined in subsection (1) includes that statute and the rules and regulations adopted under that statute. The administrator may, by rule or order, adopt an amendment or successor to a federal statute defined in subsection (1) or rules and regulations adopted under a federal statute defined in subsection (1), a federal statute that is similar to a federal statute defined in subsection (1), or a rule or regulation that is similar to a rule or regulation adopted under a federal statute defined in subsection (1).

#### **451.2104 Reference to agency or department.**

Sec. 104. Any reference in this act to an agency or department of the United States is also a reference to any successor agency, department, or entity of that agency or department.

#### **451.2105 Applicability of act.**

Sec. 105. This act modifies, limits, and supersedes the electronic signatures in global and national commerce act, but does not modify, limit, or supersede section 101(c) of that act, 15 USC 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 USC 7003. This act authorizes the filing of records and signatures, when specified by provisions of this act or by a rule or order under this act, in a manner consistent with section 104(a) of that act, 15 USC 7004.

## ARTICLE 2

## EXEMPTIONS FROM REGISTRATION OF SECURITIES

**451.2201 Securities exempt from MCL 451.2301 to 451.2306 and MCL 451.2504.**

Sec. 201. The following securities are exempt from the requirements of sections 301 to 306 and 504:

(a) A security, including a revenue obligation or a separate security as defined in rule 131 adopted under the securities act of 1933, 17 CFR 230.131, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of 1 or more states; by a political subdivision of 1 or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing.

(b) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.

(c) A security issued by and representing, or that will represent an interest in or a direct obligation of, or be guaranteed by, any of the following:

(i) An international banking institution.

(ii) A banking institution organized under the laws of the United States; a member bank of the federal reserve system; or a depository institution a substantial portion of the business of which consists or will consist of either receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of currency pursuant to 12 USC 92a.

(iii) Any other depository institution, unless by rule or order the administrator proceeds under section 204.

(d) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state.

(e) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is any of the following:

(i) Regulated in respect to its rates and charges by the United States or a state.

(ii) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory.

(iii) A public utility holding company registered under the public utility holding company act of 1935 or a subsidiary of a registered holding company within the meaning of that act.

(f) A federal covered security specified in section 18(b)(1) of the securities act of 1933, 15 USC 77r, or a security listed or approved for listing on another securities market specified by rule under this act; a put or a call option contract; warrant; a subscription right on or with respect to those securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the securities exchange act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the securities exchange act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option

or a derivative security designated by the securities and exchange commission under section 9(b) of the securities exchange act of 1934, 15 USC 78i.

(g) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the investment company act of 1940, 15 USC 80a-3. With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in this subdivision, the administrator by rule or order may limit the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to subparagraph (ii) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to meet 1 or more of the following:

(i) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule.

(ii) To file a request for exemption authorization for which a rule under this act may specify the scope of the exemption; the requirement of an offering statement; the filing of sales and advertising literature; the filing of consent to service of process complying with section 611; and grounds for denial or suspension of the exemption.

(iii) To register under section 304.

(h) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a non-profit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative.

(i) An equipment trust certificate in respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the securities act of 1933, 15 USC 77r.

#### **451.2202 Transactions exempt from MCL 451.2301 to 451.2306 and MCL 451.2504.**

Sec. 202. (1) The following transactions are exempt from the requirements of sections 301 to 306 and 504:

(a) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.

(b) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act, and a resale transaction by a sponsor of a unit investment trust registered under the investment company act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if all of the following are met at the date of the transaction:

(i) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(ii) The security is sold at a price reasonably related to its current market price.

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution.

(iv) A nationally recognized securities manual or its electronic equivalent designated by rule or order under this act or a record filed with the securities and exchange commission that is publicly available contains all of the following:

(A) A description of the business and operations of the issuer.

(B) The names of the issuer's executive officers and the names of the issuer's directors, if any.

(C) An audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger, and when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined entity.

(D) An audited income statement for each of the issuer's 2 immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement.

(v) Any of the following requirements are met:

(A) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the securities exchange act of 1934, 15 USC 78f, or designated for trading on the national association of securities dealers automated quotation system.

(B) The issuer of the security is a unit investment trust registered under the investment company act of 1940.

(C) The issuer of the security, including its predecessors, has been engaged in continuous business for at least 3 years.

(D) The issuer of the security has total assets of at least \$2,000,000.00 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet as of a date within 18 months before the date of the transaction, a pro forma balance sheet for the combined entity.

(c) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system.

(d) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 USC 78m or 78o.

(e) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security that meets 1 or more of the following:

(i) Is rated at the time of the transaction by a nationally recognized statistical rating organization in 1 of its 4 highest rating categories.

(ii) Has a fixed maturity or a fixed interest or dividend, if both of the following are met:

(A) A default has not occurred during the current fiscal year or within the 3 previous fiscal years or during the existence of the issuer and any predecessor if less than 3 fiscal years, in the payment of principal, interest, or dividends on the security.

(B) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(f) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act effecting an unsolicited order or offer to purchase.

(g) A nonissuer transaction executed by a bona fide pledgee without any purpose of evading this act.

(h) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000.00 acting in the exercise of discretionary authority in a signed record for the account of others.

(i) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for 1 or more bona fide outstanding securities, claims, or property interests, or partly in exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator at a hearing.

(j) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(k) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if all of the following are met:

(i) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit.

(ii) A general solicitation or general advertisement of the transaction is not made.

(iii) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this act as a broker-dealer or as an agent.

(l) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(m) A sale or offer to sell to any of the following:

(i) An institutional investor.

(ii) A federal covered investment adviser.

(iii) Any other person exempted by rule or order under this act.

(n) A sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which all of the following are met:

(i) There are not more than 25 purchasers in this state during any 12 consecutive months, other than those designated in subdivision (m).

(ii) There is no general solicitation or general advertising used in connection with the offer to sell or sale of the securities.

(iii) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state.

(iv) The issuer reasonably believes that all the purchasers in this state other than those designated in subdivision (m) are purchasing for investment.

(o) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or

warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(p) An offer to sell, but not a sale, of a security not exempt from registration under the securities act of 1933 if both of the following are met:

(i) A registration or offering statement or similar record as required under the securities act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the securities act of 1933, 17 CFR 230.165.

(ii) A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection, or proceeding that is public and may culminate in a stop order is not known by the offeror to be pending.

(q) An offer to sell, but not a sale, of a security exempt from registration under the securities act of 1933 if all of the following are met:

(i) A registration statement has been filed under this act, but is not effective.

(ii) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this act.

(iii) A stop order of which the offeror is aware has not been issued by the administrator under this act, and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(r) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties.

(s) A rescission offer, sale, or purchase under section 510.

(t) An offer or sale of a security to a person not resident in this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this act.

(u) An offer or sale of a security pursuant to an employee's stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including any of the following:

(i) Offers or sales of those securities to directors; general partners; trustees, if the issuer is a business trust; officers; or consultants and advisors.

(ii) Family members who acquire those securities from those persons through gifts or domestic relations orders.

(iii) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered.

(iv) Insurance agents who are exclusive insurance agents of the issuer, its subsidiaries or parents, or who derive more than 50% of their annual income from those organizations.

(v) A transaction involving any of the following:

(i) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer

or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

(ii) An act incident to a judicially approved reorganization in which a security is issued in exchange for 1 or more outstanding securities, claims, or property interests, or partly in exchange and partly for cash.

(iii) The solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the securities act of 1933, 17 CFR 230.162.

(w) Subject to subsection (2), a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this act, if both of the following are met:

(i) The issuer is a reporting issuer in a foreign jurisdiction designated in subsection (2)(a), or by rule or order of the administrator, and has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction.

(ii) The security is listed on the foreign jurisdiction's securities exchange that has been designated in subsection (2)(a), or by rule or order under this act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing.

(2) For purposes of subsection (1)(w), both of the following apply:

(a) Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange.

(b) After an administrative hearing in compliance with applicable state law, the administrator, by rule or order under this act, may revoke the designation of a securities exchange under subsection (1)(w) or this subsection if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

#### **451.2203 Rule or order; exemptions and waivers.**

Sec. 203. A rule or order under this act may exempt a security, transaction, or offer, or a rule or order under this act may exempt a class of securities, transactions, or offers, from any or all of the requirements of sections 301 to 306 and 504, and a rule or order under this act may waive any or all of the conditions for an exemption or offers under sections 201 and 202.

#### **451.2204 Denial, suspension, revocation, condition, or limitation of exemption.**

Sec. 204. (1) Except with respect to a federal covered security or a transaction involving a federal covered security, an order of the administrator under this act may deny or suspend application of, condition, limit, or revoke an exemption created under section 201(c)(iii), (g), or (h) or 202 or an exemption or waiver created under section 203 with respect to a specific security, transaction, or offer. An order under this section may only be issued pursuant to the procedures in section 306(4) or 604.

(2) A person does not violate section 301, 303 to 306, 504, or 510 by an offer to sell, an offer to purchase, a sale, or a purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.



## ARTICLE 3

REGISTRATION OF SECURITIES AND NOTICE FILINGS OF  
FEDERAL COVERED SECURITIES**451.2301 Offer or sale of security; requirements.**

Sec. 301. A person shall not offer or sell a security in this state unless 1 or more of the following are met:

- (a) The security is a federal covered security.
- (b) The security, transaction, or offer is exempted from registration under sections 201 to 203.
- (c) The security is registered under this act.

**451.2302 Notice filing.**

Sec. 302. (1) A rule or order under this act may require the filing of 1 or more of the following records with respect to a security issued by an investment company that is a federal covered security as defined in section 18(b)(2) of the securities act of 1933, 15 USC 77r, that is not otherwise exempt under sections 201 to 203:

(a) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the securities act of 1933, a consent to service of process signed by the issuer, and a fee of \$500.00.

(b) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the securities act of 1933.

(2) Any security issued by a unit investment trust that is registered or that has filed a registration statement under the investment company act of 1940 as an investment company may be offered for sale and sold into, from, or within this state for an indefinite period commencing upon the later of the trust's effectiveness with the securities and exchange commission or the administrator's receipt of a notice as prescribed by the administrator and a 1-time notice filing fee of \$500.00.

(3) Each of the following applies to a notice filing under subsection (1):

(a) A notice filing is effective for a period of 1 year, commencing upon the later of the effectiveness of the offering with the securities and exchange commission or the administrator's receipt of the notice filing.

(b) A notice filing may be renewed for an additional 1-year period by filing a current form NF and the fee required by subsection (8) before the expiration of the 1-year effective period. The renewal is effective upon the expiration of the prior notice period.

(c) A notice filing may be terminated by filing with the administrator a notice of termination as prescribed by the administrator. The termination is effective upon the administrator's receipt of the notice of termination.

(4) With respect to any security that is a federal covered security under section 18(b)(4)(D) of the securities act of 1933, 15 USC 77r, the issuer shall file all of the following:

(a) A notice on securities and exchange commission form D or a form approved by the administrator.

(b) A consent to service of process signed by the issuer, no later than 15 days after the first sale of a federal covered security in this state.

(c) A nonrefundable filing fee of \$100.00.

(5) The administrator, by rule or order, may require the filing of any document filed with the securities and exchange commission under the securities act of 1933 and a nonrefundable filing fee of \$100.00 with respect to any federal covered security.

(6) The administrator may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the securities act of 1933, 15 USC 77r, if it finds that the order is in the public interest and there is a failure to comply with this section.

(7) The administrator may waive any or all of the provisions of this section by rule or order.

(8) All of the following apply to the renewals of a notice filing under subsection (3):

(a) Subject to adjustment under subdivision (c), the fee for the renewal is 1 of the following:

(i) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of \$250,000.00 or less, \$100.00.

(ii) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$250,000.00 but not more than \$700,000.00, \$400.00.

(iii) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$700,000.00 but not more than \$1,000,000.00, \$800.00.

(iv) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$1,000,000.00, \$1,400.00.

(b) For purposes of subdivision (a), an issuer's projection of nonexempt sales of a security must be reasonable and based on any facts known to the issuer at the time of renewal that may affect sales of the security, including, but not limited to, nonexempt sales of the security in this state during the current 1-year notice filing period.

(c) If an issuer's nonexempt sales of a security in this state during a 1-year notice filing period exceed the projections for that period that the issuer had submitted to the administrator for determination of the issuer's renewal fee for that 1-year notice filing period, the issuer is not required to amend its projections or pay an additional fee for that notice filing period. However, the fee for renewal of the notice filing shall be the greater of the following:

(i) The renewal fee determined under subdivision (a).

(ii) A renewal fee determined under subdivision (a), using actual sales during the current notice filing period as the projected sales for the renewal notice filing period.

(d) If an issuer's nonexempt sales of a security in this state during a 1-year notice filing period are less than the projections for that period that the issuer had submitted to the administrator for determination of the issuer's renewal fee for the 1-year notice filing period, the issuer is not entitled to a refund of any part of the renewal fee for that period or adjustment of the renewal fee for any renewal period.

(e) Upon written request of the administrator, an issuer shall provide sales reports showing the issuer's nonexempt sales of a security in this state for the current and 2 previous 1-year notice filing periods, but the issuer is not otherwise required to provide a sales report to the administrator in connection with a renewal of a notice filing.

(f) If the administrator determines that for 2 consecutive 1-year notice filing periods an issuer's nonexempt sales of a security in this state exceeded the issuer's sales projections for that period, the administrator may assess the issuer an administrative fine in the amount of the renewal fees the issuer would have paid under subdivision (a) if its projections had been accurate. This administrative fine is in addition to an increased fee for renewal under subdivision (c), if any.

(9) If the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state, except a federal covered security under section 18(b)(1) of the securities act of 1933, 15 USC 77r. If the deficiency is corrected, the stop order is void as of the time of its issuance and no other charge or administrative or civil fine may be imposed by the administrator.

#### **451.2303 Securities registration by coordination.**

Sec. 303. (1) A security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination under this section.

(2) A registration statement and accompanying records under this section must contain or be accompanied by all of the following records in addition to the information specified in section 305 and a consent to service of process complying with section 611:

(a) A copy of the latest form of prospectus filed under the securities act of 1933.

(b) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreement with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen, copy, or description of the security that is required by rule or order under this act.

(c) Copies of any other information, or any other records, filed by the issuer under the securities act of 1933 requested by the administrator.

(d) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

(3) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(a) A stop order under subsection (4) or section 306 or issued by the securities and exchange commission is not in effect and a proceeding is not pending against the issuer under section 306.

(b) The registration statement has been on file for at least 20 days or a shorter period provided by rule or order under this act.

(c) The registrant has not consented to a later effective date.

(4) The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of a price amendment, if any, and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(5) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this act when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by

telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 306. The notice by the administrator does not preclude the institution of a proceeding under section 306.

#### **451.2304 Securities registration by qualification.**

Sec. 304. (1) A security may be registered by qualification under this section.

(2) A registration statement under this section must contain the information or records specified in section 305, a consent to service of process complying with section 611, and, if provided by rule under this act, all of the following information or records:

(a) With respect to the issuer and any significant subsidiary, its name, address, and form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, a description of its physical properties and equipment, and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

(b) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous 5 years, the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement, the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe, and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous 3 years or proposed to be effected.

(c) With respect to persons covered by subdivision (b), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer.

(d) With respect to a person owning of record or owning beneficially, if known, 10% or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b) other than the person's occupation.

(e) With respect to a promoter if the issuer was organized within the previous 3 years, the information or records specified in subdivision (b), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment.

(f) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address, the amount of securities of the issuer held by the person as of the date of the filing of the registration statement, a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous 3 years or proposed to be effected, and a statement of the reasons for making the offering.

(g) The capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous 2 years or is obligated to issue its securities.

(h) The kind and amount of securities to be offered, the proposed offering price or the method by which it is to be computed, any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class, the basis upon which the offering is to be made if otherwise than for cash, the estimated aggregate underwriting and selling discounts or commissions and finders'

fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts, the estimated amounts of other selling expenses, including legal, engineering, and accounting charges, the name and address of each underwriter and each recipient of a finder's fee, a copy of any underwriting or selling group agreement under which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter.

(i) The estimated monetary proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the estimated amount to be used for each purpose, the order or priority in which the proceeds will be used for the purposes stated, the amounts of any funds to be raised from other sources to achieve the purposes stated, the sources of the funds, and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

(j) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in subdivision (b), (d), (e), (f), or (h) and by any person that holds or will hold 10% or more in the aggregate of those options.

(k) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous 2 years, and a copy of the contract.

(l) A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, including any litigation, action, or proceeding known to be contemplated by governmental authorities.

(m) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 202(q)(ii).

(n) A specimen or copy of the security being registered, unless the security is uncertificated, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, in effect, and a copy of any indenture or other instrument covering the security to be registered.

(o) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer.

(p) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement.

(q) A balance sheet of the issuer as of a date within 4 months before the filing of the registration statement, a statement of income and a statement of cash flows for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds

of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant.

(r) Any additional information or records required by rule or order under this act.

(3) A registration statement under this section becomes effective 30 days, or any shorter period provided by rule or order under this act, after the date the registration statement or the last amendment other than a price amendment is filed, if any of the following apply:

(a) A stop order is not in effect and a proceeding is not pending under section 306.

(b) The administrator has not issued an order under section 306 delaying effectiveness.

(c) The applicant or registrant has not requested that effectiveness be delayed.

(4) The administrator may delay effectiveness once for not more than 90 days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.

(5) A rule or order under this act may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (2) be sent or given to each person to which an offer is made, before or concurrently with the earliest of any of the following:

(a) The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made, or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution.

(b) The confirmation of a sale made by or for the account of the person.

(c) Payment pursuant to the sale.

(d) Delivery of the security pursuant to the sale.

**451.2305 Registration statement; persons permitted to file; filing fee; information; incorporation by reference; nonissuer distribution; deposit of security in escrow; impoundment of proceeds; conditions; form of subscription or sale contract; duration of registration statement; reports; posteffective amendments.**

Sec. 305. (1) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this act.

(2) A person filing a registration statement shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than \$100.00 or more than \$1,250.00. If an application for registration is withdrawn before the effective date or a preeffective stop order is issued under section 306, the administrator shall retain a fee of \$100.00 if the initial review has not been commenced, and the full filing fee after review has been commenced.

(3) A registration statement filed under section 303 or 304 must specify all of the following:

(a) The amount of securities to be offered in this state.

(b) The states in which a registration statement or similar record in connection with the offering has been or is to be filed.

(c) Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

(4) A record filed under this act or the predecessor act, within 5 years preceding the filing of a registration statement, may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(5) In the case of a nonissuer distribution, information or a record shall not be required under subsection (9) or section 304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made, or unless it can be furnished by those persons without unreasonable effort or expense.

(6) A rule or order under this act may require as a condition of registration that a security issued within the previous 5 years, or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash, be deposited in escrow and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule or order under this act, but the administrator shall not reject a depository institution solely because of its location in another state.

(7) A rule or order under this act may require as a condition of registration that a security registered under this act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this act or preserved for a period specified by the rule or order, which may not be longer than 5 years.

(8) Except while a stop order is in effect under section 306, a registration statement is effective for 1 year after its effective date, or for a longer period designated in an order under this act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until 1 year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(9) While a registration statement is effective, a rule or order under this act may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(10) A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee calculated in the manner specified in subsection (2). A posteffective amendment relates back to the date of the offering of the additional securities being registered if the amendment is filed and the additional registration fee is paid within 1 year after the date of the sale.

**451.2306 Denying, suspending, or revoking effectiveness; stop order; publication of guidelines, rules, or orders; conditions prohibiting issuance of stop order; summary revocation, denial, postponement, or suspension of effectiveness; modifying or vacating stop order.**

Sec. 306. (1) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that 1 or more of the following apply:

(a) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 305(10) as of its effective

date, or a report under section 305(9) is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.

(b) This act or a rule adopted or order issued under this act or a condition imposed under this act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter.

(c) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this act applicable to the offering, but the administrator shall not institute a proceeding against an effective registration statement under this paragraph more than 1 year after the date of the order or injunction on which it is based, and the administrator shall not issue an order under this subdivision on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section.

(d) The issuer's enterprise or method of business includes or would include activities that are unlawful where performed.

(e) With respect to a security sought to be registered under section 303, there has been a failure to comply with the undertaking required by section 303(2)(d).

(f) The applicant or registrant has not paid the proper filing fee, but the administrator shall void the order if the deficiency is corrected.

(g) One or more of the following apply to the offering:

(i) The offering will work or tend to work a fraud upon purchasers or would so operate.

(ii) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, promoters' profits or participations, or unreasonable amounts or kinds of options.

(iii) The offering is being made on terms that are unfair, unjust, or inequitable.

(2) To the extent practicable, the administrator by rule or order under this act shall publish guidelines, rules, or orders that provide notice of conduct that violates subsection (1)(g).

(3) The administrator shall not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(4) The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (5) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.



(5) The administrator shall not issue a stop order under this section until all of the following have occurred:

(a) Appropriate notice has been given to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

(b) An opportunity for hearing has been given to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

(c) Findings of fact and conclusions of law in a record in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(6) The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

**451.2307 Waiver or modification of requirements of MCL 451.2302, 451.2303, and 451.2304(2), or certain requirements of MCL 451.2305(9).**

Sec. 307. The administrator may waive or modify, in whole or in part, any or all of the requirements of sections 302, 303, and 304(2) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 305(9).

ARTICLE 4

BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS,  
INVESTMENT ADVISER REPRESENTATIVES, AND  
FEDERAL COVERED INVESTMENT ADVISERS

**451.2401 Broker-dealer registration; requirements; exemptions; limitation on employment or association; employment or association with certain individuals prohibited; rule or order.**

Sec. 401. (1) A person shall not transact business in this state as a broker-dealer unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection (2) or (4).

(2) The following persons are exempt from the registration requirement of subsection (1):

(a) A broker-dealer if the broker-dealer does not have a place of business in this state and if the broker-dealer's only transactions effected in this state are with any of the following:

(i) The issuer of the securities involved in the transactions.

(ii) A broker-dealer registered as a broker-dealer under this act or not required to be registered as a broker-dealer under this act.

(iii) An institutional investor.

(iv) A nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000.00 acting for the account of others pursuant to discretionary authority in a signed record.

(v) A bona fide preexisting customer whose principal place of residence is not in this state and the broker-dealer is registered as a broker-dealer under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence.

(vi) A bona fide preexisting customer whose principal place of residence is in this state but who was not present in this state when the customer relationship was established, if both of the following are met:

(A) The broker-dealer is registered under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence.

(B) Within 45 days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for good cause.

(vii) Not more than 3 customers in this state during the previous 12 months, in addition to those specified in subparagraphs (i) to (vi) and under subparagraph (viii), if the broker-dealer is registered under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business.

(viii) Any other person exempted by rule or order under this act.

(b) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

(c) A person licensed or registered as a mortgage broker, mortgage lender, or mortgage servicer under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, in the offer or sale of mortgage loans as defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a.

(3) A broker-dealer, or an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, shall not directly or indirectly employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this act, the securities and exchange commission, a securities regulator of another state, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known of the suspension, revocation, or bar. If requested by a broker-dealer or issuer and if good cause is shown, an order under this act may modify or waive, in whole or in part, the application of the prohibitions of this subsection.

(4) A rule or order under this act may permit any of the following:

(a) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, any of the following:

(i) An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States.

(ii) An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction.