

HOUSE BILL No. 5430

March 26, 2014, Introduced by Rep. Jenkins and referred to the Committee on Commerce.

A bill to amend 2008 PA 551, entitled
"Uniform securities act (2002),"
by amending section 102 (MCL 451.2102) and by adding sections 600
and 600a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) "Administrator" means the office of ~~financial and~~
4 ~~insurance regulation of the department of energy, labor, and~~
5 ~~economic growth~~ **SECURITIES REGULATION CREATED IN SECTION 600.**

6 (b) "Agent" means an individual other than a broker-dealer who
7 represents a broker-dealer in effecting or attempting to effect
8 purchases or sales of securities or represents an issuer in
9 effecting or attempting to effect purchases or sales of the
10 issuer's securities. The term does not include a partner, officer,

1 or director of a broker-dealer or issuer, or an individual having a
2 similar status or performing similar functions, unless the
3 individual otherwise comes within the term. The term does not
4 include an individual excluded by rule or order under this act. The
5 term does not include a person acting solely as a finder and
6 registered as a broker-dealer under this act or acting as a finder
7 in a transaction exempt under section 202(1)(r).

8 (c) "Bank" means any of the following:

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

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

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

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

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

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

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

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

25 (d) "Broker-dealer" means a person engaged in the business of
26 effecting transactions in securities for the account of others or
27 for the person's own account. The term does not include any of the

1 following:

2 (i) An agent.

3 (ii) An issuer.

4 (iii) A bank or savings institution if its activities as a
5 broker-dealer are limited to those specified in section 3(a)(4) and
6 3(a)(5) of the securities exchange act of 1934, 15 USC 78c, or a
7 bank that satisfies the conditions described in section 3(a)(4)(E)
8 of the securities exchange act of 1934, 15 USC 78c.

9 (iv) An international banking institution.

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

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

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

25 (ii) A Morris Plan bank.

26 (iii) An industrial loan company that is not an insured
27 depository institution, as that term is defined in section 3(c)(2)

1 of the federal deposit insurance act, 12 USC 1813(c)(2).

2 (f) "Federal covered investment adviser" means a person
3 registered under the investment advisers act of 1940.

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

8 (h) "Filing" means the receipt under this act of a record by
9 the administrator or a designee of the administrator.

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

17 (j) "Fraud," "deceit," and "defraud" include, but are not
18 limited to, common law deceit.

19 (k) "Guaranteed" means guaranteed as to payment of all
20 principal and all interest.

21 **SEC. 600. (1) THE OFFICE OF SECURITIES REGULATION IS CREATED**
22 **IN THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS.**

23 **(2) THE GOVERNOR SHALL APPOINT A SECURITIES COMMISSIONER TO**
24 **SERVE AS THE HEAD OF THE OFFICE OF SECURITIES REGULATION. THE**
25 **GOVERNOR SHALL SELECT THE COMMISSIONER FROM A LIST OF AT LEAST 2**
26 **NAMES SUBMITTED TO HIM OR HER BY THE BOARD.**

27 **(3) ALL OF THE FOLLOWING APPLY TO THE OFFICE OF SECURITIES**

1 REGULATION:

2 (A) THE OFFICE SHALL HAVE ALL OF THE AUTHORITY, POWERS,
3 DUTIES, FUNCTIONS, AND RESPONSIBILITIES OF THE DEPARTMENT OF
4 LICENSING AND REGULATORY AFFAIRS UNDER THIS ACT THAT WERE
5 TRANSFERRED TO THAT DEPARTMENT FROM THE SECURITIES DIVISION OF THE
6 OFFICE OF FINANCE AND INSURANCE REGULATION UNDER EXECUTIVE
7 REORGANIZATION ORDER NO. 2012-6, MCL 445.2034.

8 (B) THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS SHALL
9 PERFORM THE BUDGETING, PROCUREMENT, AND RELATED MANAGEMENT
10 FUNCTIONS OF THE OFFICE.

11 (4) AS USED IN THIS SECTION AND SECTION 600A:

12 (A) "BOARD" MEANS THE SECURITIES REGULATION BOARD CREATED IN
13 SECTION 600A.

14 (B) "COMMISSIONER" MEANS THE SECURITIES COMMISSIONER APPOINTED
15 UNDER SUBSECTION (2).

16 (C) "OFFICE" MEANS THE OFFICE OF SECURITIES REGULATION CREATED
17 IN SUBSECTION (1).

18 SEC. 600A. (1) THE SECURITIES REGULATION BOARD IS CREATED IN
19 THE OFFICE.

20 (2) ALL OF THE FOLLOWING APPLY TO THE BOARD:

21 (A) THE BOARD SHALL CONSIST OF 9 MEMBERS, AS FOLLOWS:

22 (i) THREE MEMBERS APPOINTED BY THE GOVERNOR. THE GOVERNOR SHALL
23 APPOINT 1 OF THE MEMBERS DESCRIBED IN THIS SUBDIVISION TO SERVE AS
24 THE CHAIRPERSON OF THE BOARD.

25 (ii) TWO MEMBERS SELECTED BY THE SPEAKER OF THE HOUSE OF
26 REPRESENTATIVES.

27 (iii) TWO MEMBERS SELECTED BY THE MAJORITY LEADER OF THE SENATE.

1 (iv) TWO MEMBERS SELECTED BY THE DIRECTOR OF THE DEPARTMENT OF
2 LICENSING AND REGULATORY AFFAIRS.

3 (B) MEMBERS OF THE SECURITIES REGULATION BOARD SHALL SERVE FOR
4 2-YEAR TERMS OR UNTIL A SUCCESSOR IS APPOINTED OR SELECTED,
5 WHICHEVER IS LATER. A VACANCY ON THE BOARD SHALL BE FILLED FOR THE
6 UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT OR
7 SELECTION UNDER SUBSECTION (1).

8 (C) THE FIRST MEETING OF THE BOARD SHALL BE CALLED BY THE
9 DIRECTOR OF THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS. AT
10 THE FIRST MEETING, THE BOARD SHALL ELECT FROM AMONG ITS MEMBERS A
11 VICE-CHAIRPERSON AND OTHER OFFICERS AS IT CONSIDERS NECESSARY OR
12 APPROPRIATE. AFTER THE FIRST MEETING, THE BOARD SHALL MEET AT LEAST
13 ONCE IN THE SECOND WEEK OF JANUARY EACH YEAR, AND AT LEAST EVERY 10
14 WEEKS DURING THE REMAINDER OF EACH CALENDAR YEAR. THE CHAIRPERSON
15 SHALL DETERMINE THE TIME AND PLACE OF EACH MEETING OF THE BOARD
16 DESCRIBED IN THIS SUBDIVISION. THE BOARD MAY MEET MORE FREQUENTLY
17 AT THE CALL OF THE CHAIRPERSON OR IF REQUESTED BY 5 OR MORE
18 MEMBERS.

19 (D) A MAJORITY OF THE MEMBERS OF THE BOARD CONSTITUTE A QUORUM
20 FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE BOARD. A
21 MAJORITY OF THE MEMBERS PRESENT AND SERVING ARE REQUIRED FOR
22 OFFICIAL ACTION OF THE BOARD.

23 (E) THE BOARD SHALL CONDUCT ITS BUSINESS ONLY AT PUBLIC
24 MEETINGS OF THE BOARD, HELD IN COMPLIANCE WITH THE OPEN MEETINGS
25 ACT, 1976 PA 267, MCL 15.261 TO 15.275.

26 (F) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
27 RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL FUNCTION IS

1 SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231
2 TO 15.246.

3 (G) MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION.
4 HOWEVER, THE OFFICE MAY REIMBURSE MEMBERS OF THE BOARD FOR THEIR
5 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR
6 OFFICIAL DUTIES AS MEMBERS OF THE BOARD.

7 (H) THE BOARD'S DUTIES SHALL INCLUDE ALL OF THE FOLLOWING:

8 (i) SERVING AS AN ADVISORY BOARD TO THE GOVERNOR, THE DIRECTOR
9 OF THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS, THE OFFICE,
10 AND THE COMMISSIONER CONCERNING SECURITIES REGULATION ISSUES.

11 (ii) WHEN REQUESTED, FOR PURPOSES OF SECTION 600(2), PROVIDING
12 THE GOVERNOR WITH A LIST OF THE NAMES OF AT LEAST 2 CANDIDATES IT
13 DETERMINES ARE QUALIFIED TO SERVE AS THE COMMISSIONER.

14 (iii) PERFORMING ANY OTHER DUTIES CONCERNING ECONOMIC ISSUES IN
15 THIS STATE ASSIGNED BY THE GOVERNOR, THE DIRECTOR OF THE DEPARTMENT
16 OF LICENSING AND REGULATORY AFFAIRS, THE OFFICE, OR THE
17 COMMISSIONER OR REQUIRED BY LAW.