



**House  
Legislative  
Analysis  
Section**

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House Bill 4089 as introduced  
First Analysis (2-26-87) Floor Copy

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Sponsor: Rep. David Honigman  
Committee: Corporations and Finance

**THE APPARENT PROBLEM:**

Article 8 of the Uniform Commercial Code (UCC) governs the buying and selling of investment securities such as stocks and bonds. Historically, securities have been represented by pieces of paper: certificates. However, in the last 20 years, "uncertificated" transfers of securities, transfers made without the physical exchange of certificates, have commanded a significant portion of market activity. Mutual funds and brokerage accounts are common examples. Where large numbers of securities are traded frequently, certificateless transfers by computer are often favored over the physical transfer of certificates.

The next step — certificateless issues of securities — required that laws recognizing only certificated securities be changed. To facilitate the development and use of uncertificated securities, as well as certificateless transfers, the National Conference of Commissioners of Uniform State Laws in 1977 recommended amendments to Article 8 that accommodate the existence and use of uncertificated securities. Those amendments have been adopted by at least 27 states, including the crucial commercial jurisdictions of New York and Delaware, and the Michigan Law Revision Commission and others have proposed that Michigan also enact the 1977 amendments.

**THE CONTENT OF THE BILL:**

The bill would amend Article 8 of the Uniform Commercial Code (UCC), which deals with investment securities, to incorporate provisions for the issuance, transfer and creation of enforceable security interests in uncertificated securities — that is, securities for which no certificates are issued. Articles 1, 5, and 9, all of which contain references to securities, would be made consistent with the changes to Article 8. In addition, the bill would change the way the act treats certificated securities by:

- incorporating provisions for transfers of security interests by or to any financial intermediary (banks, clearing corporations, and others who maintain securities accounts for their customers) and not just brokers;
- allowing liens of either certificated or uncertificated securities to be established by legal process and not necessarily by seizure of the certificate;
- including both certificated and uncertificated securities in a new section establishing Article 8's authority over termination of security interests in securities. This section would declare a security interest to be enforceable only if transferred to the secured party (or someone designated by the secured party) under the portion of Article 8 (Section 8313 [1]) dealing with transfers of security interests in securities. Such a transfer generally would be sufficient to perfect the security interest; enforceability would be determined by the applicable portions of Article 8, rather than Article 9, which otherwise governs security interests in property. A security interest generally would be terminated by transfer to the debtor under Section 8313 (1).

The bill basically would extend to uncertificated securities the structure that now applies to certificated securities. The uncertificated security's analog to a certificate would be the "initial transaction statement" which the issuer of an uncertificated security would send to the appropriate parties whenever an uncertificated security was transferred, pledged, or released from a pledge. This statement would notify the purchaser, secured party, or owner of important conditions attached to the security. Transfers of and security interests in uncertificated securities would be effected by proper notice to the issuer and changes on the issuer's books, rather than by the exchange of a certificate. The issuer would then send confirming initial transaction statements to the parties involved.

The duties of transferor, broker, and issuer under various circumstances are spelled out in detail. Transfers, pledges, and releases also could be made by appropriate entries on the books of a clearing corporation. Issuers would have to send regular statements to owners and pledgees generally reiterating the information (including notice of liens, restrictions, and adverse claims) required on an initial transaction statement.

Information on a statement would apply only at the time of issuance; a statement would offer no guarantees beyond that time (the way a certificate does). In addition to receiving statements, a pledgee would receive dividends and any additional securities that the issuer otherwise would send to the owner; the owner would retain all powers other than the power to transfer.

Issuers who regularly issued both certificated and uncertificated securities in a given class would have to convert either form into the other upon an owner's or pledgee's request (MCL 440.1201 et al.).

**FISCAL IMPLICATIONS:**

The bill has no fiscal implications.

**ARGUMENTS:**

**For:**

The bill is necessary for Michigan law to keep up with national changes to the UCC. It would enable brokers and others to make uncertificated transfers for Michigan clients under Michigan law, rather than another state's, and would offer lenders the procedural assurances they need to comfortably make loans in Michigan on uncertificated issues. Without the bill, new firms wishing to incorporate under a certificateless system may go elsewhere to incorporate (although Michigan's Business Corporation Act allows uncertificated issues, the absence of a transfer system in Michigan law would be a deterrent). The bill would expand the practical options open to businesses likely to favor uncertificated systems, whether they be giant

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publicly traded corporations with extensive computer capability, or small closed corporations whose internal securities transactions are so simple that certificates are unnecessary. Businesses would be able to choose between certificated, uncertificated, and mixed systems without the unjustified pressure imposed by an antiquated law that favors a certificated system over others.

***POSITIONS:***

The National Conference of Commissioners on Uniform State Laws supports the bill (2-25-87).

The Michigan Law Revision Commission supports the bill (2-25-87).

The Michigan Bankers' Association supports the bill (2-25-87).