



**House
Legislative
Analysis
Section**

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UNIFORM SECURITIES ACT; GEN. AMENDMENTS

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House Bill 5624

Sponsor: Rep. John Bennett

Committee: Corporations and Finance

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Complete to 5-20-88

***A SUMMARY OF HOUSE BILL 5624 AS
INTRODUCED 5-10-88***

The Uniform Securities Act governs the licensing and regulation of those who deal in the issuance, sale or purchase of securities in Michigan. The act imposes various licensing and registration fees, regulates the types of securities that can be issued, sold or purchased, as well as the types of activities related to the issuance, sale or purchase of securities that are allowed, provides for certain exemptions from the act, and provides various penalties for those found in violation of the act. The bill would amend the act primarily to 1) provide that certain types of security issuers would be exempt from the act, 2) prescribe higher licensing and registration fees and 3) increase penalties for those found in violation of the act.

Security exemptions. The bill would specify that any security issued by an issuer registered as an "open-end management investment company or unit investment trust" as defined in section eight of the federal Investment Company Act would be exempt from this act, if the issuer met all of the following requirements:

- The issuer had acted, or was affiliated with an investment adviser that had acted, as an investment adviser to one or more registered investment companies or unit investment trusts for at least three years prior to an offer or sale of a security claimed to be exempt, and the issuer was advised by an investment adviser that a) was a depository institution exempt from registration under the federal Investment Advisers Act, and b) was currently registered as an investment adviser and had been registered, or was affiliated with an adviser that had been registered, as an investment adviser under the federal Investment Advisers Act for at least three years prior to an offer or sale of a security claimed to be exempt;

OR

The issuer had a sponsor that had, at all times throughout the three years preceding an offer or sale of a security claimed to be exempt under the act, sponsored one or more registered investment companies or unit investment trusts with aggregate total assets exceeding one hundred million dollars;

- Submission to the administrator (defined by the act to be the Corporation and Securities Bureau of the Department of Commerce), prior to any sale exempted under the act, of a notice of intention to sell and a filing fee of \$1,250 for open-end management companies or a filing fee of \$750 for unit investment trusts;

- In the event any offer or sale was to be made more than 12 months after the date the notice of intention to sell had been filed with the bureau, it would be necessary to refile a notice of intention to sell and to repay the required filing fee (\$1,250 or \$750);

- For purposes of being exempt, an investment advisor would be considered to be affiliated with another investment advisor if it controlled, was controlled by, or was under common control with the other investment advisor; and

- The exemption for open-end management investment companies and unit investment trusts would not grant an exemption from registration for salespersons who transact business under the act as broker-dealers, commodity issuers, or agents.

Securities transaction exemptions. The act exempts a number of securities transactions from licensing requirements. The bill would include among these exempted securities transactions any offer or sale to a bank, savings institution, trust company, insurance company, investment company or pension or profit sharing trust whose assets were managed by the state treasurer, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association.

The bill would also include in this list any transaction made according to a uniform limited offering exemption filing. Such a transaction could not be combined with other exempt transactions. A person who claimed such an exemption would have to pay a filing fee of \$100 at the time of filing the initial notice form.

Licensing, Registration Fees. The act requires each applicant for registration to pay a filing fee and every registrant under the act to pay an annual fee — a fee which varies depending on the type of securities a registrant is licensed to issue. In the case of the filing fee, the act requires that every registrant filing a registration statement must pay a filing fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in the state. The act, however, specifies that this fee shall not be less than \$50 or more than \$500. The bill would raise the minimum filing fee required from \$50 to \$100 and would raise the maximum filing fee required from \$500 to \$1,250. The bill would also raise the amount of a fee the administrator could retain in the event that an application for registration is withdrawn (as conditioned in the act), from \$50 to \$100. In addition the bill would raise all registrant annual fees as follows:

- for a broker-dealer, from \$250 to \$500;
- for a commodity issuer, from \$250 to \$500;
- for a principal, from \$25 to \$50;
- for an agent, from \$15 to \$50; and
- for an investment advisor, from \$100 to \$250.

OVER

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The bill would delete a provision in the act which requires a broker dealer registrant who intends to maintain more than one office for the purpose of conducting business within the state to pay an additional filing fee of \$75 for each additional office and when a registrant an annual fee of \$75 for each additional office. The bill would specify that a licensed agent who had terminated his or her connection with a broker-dealer would have to pay a transfer fee of \$50 when transferring his or her connection to another broker-dealer. The fee for filing an application for registration of a successor would be raised from \$50 to \$100. Also raised from \$50 to \$100 would be fees for filing various exempt transactions.

Other provisions. The act exempts various individuals from having to be licensed under the act, including those who are licensed under the Mortgage Brokers, Lenders, and Servicers Licensing Act. The bill would exempt those who are employed by those licensed under the Mortgage Brokers, Lenders, and Servicers Licensing Act from the agent provision of this act, when the person is acting as an employee of the person licensed to offer or sell mortgage loans.

The act provides exemptions for certain types of securities offered, including revenue obligations of the U.S. or any state or local government or their agencies. However, the exemption does not apply unless the issue is approved by the Municipal Finance Commission or a written notice is filed with the administrator at least ten days before the issuance of the security specifying the terms of the offer together with copies of any prospectus and sales material. The bill would strike the exception; thus all governmental obligations would be exempt without Municipal Finance Commission review or notice to the administrator.

The act exempts securities from the act that are issued by non-profit groups but specifies that a notice be filed with the administrator and certain other procedures be followed unless the securities issued are part of an issue having an aggregate sales price of \$50,000 or less. The bill would raise this minimum aggregate sales price for securities that could be issued by non-profit organizations, without having to notify the administrator and follow other procedures, to \$250,000. The bill would also delete a requirement for administrator notification for any investment contract or option issued in connection with an employees' stock purchase, option, savings, pension, profit sharing or similar pension plan.

The act specifies that its definition of "offer" or "offer to sell" does not include any bona fide loan; the bill would delete this provision.

Penalties. The act specifies that a person convicted of willfully violating certain sections of the act can be fined not more than \$25,000 or imprisoned not more than seven years. The bill would specify that a violator could be fined not more than \$25,000 "for each violation" — as opposed to a total fine of \$25,000 — or imprisoned not more than ten years. Further, the bill would allow the administrator to impose a civil penalty of up to \$1,000 for each violation of the act, not to exceed a total of \$10,000.

MCL 451.601 et al.