



**House
Legislative
Analysis
Section**

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UNIFORM SECURITIES ACT; GEN'L. AMENDMENTS

House Bill 5624 with committee amendments
First Analysis (6-7-88)

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Sponsor: Rep. John Bennett
Committee: Corporations and Finance

Mich. State Law Library

THE APPARENT PROBLEM:

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 gives the Corporations and Securities Bureau (CSB) of the commerce department authority to ensure that those dealing in securities comply with the requirements found in the act and authorizes the bureau to impose various fees; these fees allow the bureau to carry out its various functions as administrator of the act. The last time fees within the act were raised was in 1979. Since the market for securities changes quickly and relatively often, the bureau attempts to stay abreast of general trends in different securities and tries to ensure that the act does not impose undue regulation on those securities many feel have increased in quality. Because it costs the bureau money to regulate security issuers, some feel the bureau's responsibility to regulate certain "blue-chip" securities is unnecessary and could be reduced, apparently without jeopardizing investor protection. In addition, investor faith in various securities has fallen as a result of last October's stock market dive. The decreased market activity combined with a need to decrease government spending have apparently placed an increasing strain on the financial and personnel resources of the bureau. Some feel these problems could be countered by increasing various fees within the act, reducing bureau responsibility to regulate some types of securities already regulated under federal laws, and imposing stiffer fines and penalties on those who are found guilty of violating the act.

THE CONTENT OF THE BILL:

The bill would amend the Uniform Securities Act primarily to 1) exempt certain types of securities and security issuers 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;

- The issuer had submitted 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, 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, however, 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,

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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. The bill would alter various registrant annual fees as follows:

- for a broker-dealer, no change (\$250);
- for a commodity issuer, no change (\$250);
- for a principal, from \$25 to \$30;
- for an agent, from \$15 to \$30; and
- for an investment advisor, from \$100 to \$150.

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 \$10 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.

The bill specifies that fees and fines received under the act would have to be deposited in the state treasury to the credit of the bureau, and would have to be used to pay for operating expenses incurred in carrying out those duties required of the bureau by law. After the bureau had paid operating expenses, any money remaining would be credited to the general fund.

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.

The bill would become effective October 1, 1988.

MCL 451.601 et al.

FISCAL IMPLICATIONS:

According to the Department of Commerce, the bill would increase revenues for the department by approximately \$2 million. This increased revenue would be directed to fund the operations of the Corporations and Securities Bureau. House Bill 5451, the 1988-89 appropriations bill for the Departments of Commerce, Labor and Licensing and Regulation, has passed the House and is currently before the Senate Appropriations committee. This bill essentially would increase the bureau's budget by approximately \$4 million; more than half of this would have to be paid for out of the bureau's fees. The \$2 million (approximately) that House Bill 5624 would generate would be used to help offset higher operating costs for the bureau if the budget is enacted as proposed. (6-3-88)

ARGUMENTS:

For:

The bill would exempt certain high-quality securities from the act. These "blue-chip" mutual funds securities are currently regulated under the federal Investment Company Act and, based on the experience of the bureau and investors, present little danger to investors. Exempting these from the act would relieve the bureau of costly, unnecessary regulation, and would reduce massive amounts of paperwork currently required of companies who deal in these. The bureau's decreased financial and personnel resources, due to cuts in state spending and decreased market activity in securities since last October's stock market fall, have put a strain on the bureau's operations. The bill would benefit the bureau and investment companies, both of which have been directly affected by decreased activity in the securities market. Further, the act's fees have not been raised since 1979 and currently are significantly lower than similar fees charged by other states; the bill would raise various fees to levels comparable with those in other states. According to a spokesperson from the commerce department, 90 percent of those currently licensed under the act are out-of-state securities issuers anyway (primarily from New York), so most of the fee increases under the bill would not affect Michigan licensees. In addition, the bill would raise penalties and fines under the act in an attempt to promote better compliance with the act. Revenue generated from the bill would be used to offset an increased budget for the bureau that has been proposed in the appropriations process.

POSITIONS:

The Department of Commerce supports the bill. (6-2-88)

The Corporations, Finance and Business Law Section of the State Bar of Michigan supports the concept of the bill. (6-6-88)

The Investment Company Institute, which represents companies that deal in mutual funds securities in Michigan, supports the bill. (6-3-88)