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House Bill 5624 (S-5)**Sponsor:** Representative John Bennett**House Committee:** Corporations and Finance**Senate Committee:** Commerce and Technology**Date Completed:** 11-30-88***RATIONALE***

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 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; which the Bureau uses 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 other 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.

CONTENT

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. The bill is tie-barred to Senate Bill 850 and would take effect December 1, 1988. (Senate Bill 850 would create a new act to provide for the establishment of economic development organizations.)

Security Exemptions

The bill specifies that any security issued by an issuer registered as an "open-end management investment company or unit investment trust" as defined in Section 8 of the Federal Investment Company Act would be exempt from the Uniform Securities Act, if the issuer met certain requirements. First, the issuer would have to comply with either of the following:

- 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.
- 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 these provisions, sponsored one or more registered investment companies or unit investment trusts with aggregate total assets exceeding \$100 million.

In addition, the issuer would have to submit to the administrator (defined by the Act as the Corporation and Securities Bureau of the Department of Commerce), before 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.

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, pension or profit sharing trust, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association whose assets

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were managed by the State Treasurer, or to a lender approved by the Federal Housing Administration and who satisfied any additional requirements established by the administrator by rule or order.

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 pay a filing fee of one-tenth of 1% of the maximum aggregate offering price at which the registered securities are to be offered in the State. The Act specifies, however, that this fee cannot be less than \$50 or more than \$500. The bill would raise the minimum filing fee from \$50 to \$100 and the maximum filing fee from \$500 to \$1,250. The bill would also raise the amount of a fee the administrator can retain in the event that an application for registration is withdrawn (as conditioned in the Act), from \$50 to \$100. The bill would retain the \$250 annual fee for broker-dealers and commodity issuers, but would alter other registrant annual fees as follows:

- For a principal, from \$25 to \$30.
- For an agent, from \$15 to \$30.
- For an investment advisor, from \$100 to \$150.

The bill would delete a requirement that a broker dealer registrant who intends to maintain more than one office for the purpose of conducting business within the State, 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 require that a licensed agent who had terminated his or her connection, with a broker-dealer 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. Fees for filing various exempt transactions also would be raised from \$50 to \$100.

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. The bill also states that the fees and fines received could not be expended for partisan political activity.

Penalties

The Act specifies that a person convicted of willfully violating certain sections of the Act can be fined up to \$25,000 or imprisoned for up to seven years, or both. The bill specifies that a violator could be fined up to \$25,000 "for each violation" — as opposed to a total fine of \$25,000 — or imprisoned for up to 10 years, or both. 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.

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 or registered under the Mortgage Brokers, Lenders, and Servicers Licensing Act from the agent registration provision of the Uniform Securities 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., any state, or any local government, or its agencies. The exemption does not apply, however, unless the issue is approved by the Municipal Finance Commission or a written notice is filed with the administrator at least 10 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 this condition; thus, all governmental obligations would be exempt without Municipal Finance Commission review or notice to the administrator.

The Act exempts securities that are issued by nonprofit groups but requires 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 nonprofit 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.

Repealer

The bill would repeal as of December 1, 1990, the Act's current provisions concerning the registration of broker-dealers, principals, commodity issuers, agents and investment advisers, and the exemption of certain securities from the Act's requirements for the registration of securities and the filing of literature to be sent to prospective investors.

MCL 451.601 et al.

SENATE COMMITTEE ACTION

The Senate Committee adopted a substitute that would:

- Specify that fees and fines received under the Act could not be expended for partisan political activity.
- Change the effective date of the bill from October 1, 1988, to December 1, 1988, and tie bar the bill to Senate Bill 850.
- Repeal as of December 1, 1990, the Act's current provisions concerning the registration of broker-dealers, principals, commodity issuers, agents and investment advisers, and the exemption of certain securities from the Act's requirements for the registration of securities and the filing of literature to be sent to prospective investors.
- Include among the securities transactions exempted from licensing requirements any offer or sale to a lender who was approved by the Federal Housing Administration

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and who satisfied any additional requirements established by the administrator by rule or order.

FISCAL IMPACT

The bill would have a fiscal impact of approximately \$2.17 million in additional annual revenue to the State, with no increased cost to the State, and no fiscal impact on local government.

The fiscal impact, based on the number of FY 1986-87 registrants, was originally estimated to be approximately \$3.1 million in additional revenue from securities fees. That estimate was based on pre-stock market crash data; since the crash, the number of broker/dealers, agents, and securities offerings has dropped. Using an estimate of a 30% reduction as the leveled-off post-crash number, the approximate increase in revenue from securities fees would be \$2.17 million annually.

Approximately \$1.9 million of this additional revenue was appropriated by Public Act 305 of 1988 for the Department of Commerce FY 1988-89 budget. \$1.735 million for Community Growth Alliances would come from the proposed increase in securities fees (a shift in funds from General Fund), and a \$.15 million increase for Investment Oversight would be funded by the proposed increase in securities fees.

ARGUMENTS

Supporting Argument

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 "blue-chip" securities. 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 reduced activity in the securities market.

Supporting Argument

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% 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-based 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.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.