

HOUSE BILL No. 6061

May 16, 2006, Introduced by Reps. Hildenbrand, Hune and Gaffney and referred to the Committee on Insurance.

A bill to amend 1964 PA 265, entitled
"Uniform securities act,"
by amending section 401 (MCL 451.801), as amended by 2000 PA 494.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 401. As used in this act, unless the context otherwise
2 requires:

3 (a) "Administrator" means the office of financial and
4 insurance services of the department of ~~consumer and industry~~
5 ~~services~~ **LABOR AND ECONOMIC GROWTH**.

6 (b) "Affiliate" means a person that directly or indirectly
7 through 1 or more intermediaries controls, is controlled by, or is
8 under common control with a specified person.

9 (c) "Agent" means any individual other than a broker-dealer

1 who represents a broker-dealer or issuer in effecting or attempting
2 to effect purchases or sales of securities. "Agent" does not
3 include an individual who represents an issuer in (1) effecting
4 transactions in a security exempted by section 402(a)(1), (2), (3),
5 (4), (5), (9), or (10), (2) effecting transactions exempted by
6 section 402(b), (3) effecting transactions in a covered security as
7 defined in section 18(b)(3) or 18(b)(4)(D) of the securities act of
8 1933, 15 ~~U.S.C.~~ **USC** 77r, or (4) effecting transactions with
9 existing employees, partners, officers, or directors of the issuer
10 or any of its subsidiaries if, in connection with all of these 4
11 cases, no commission is paid or given directly or indirectly for
12 soliciting any person in this state. "Agent" does not include an
13 officer or general partner of an issuer whose securities are
14 registered under the provisions of this act, who represents the
15 issuer in effecting transactions in the registered securities, if
16 no commission is paid or given directly or indirectly for
17 soliciting any person in this state. "Agent" does not include a
18 person acting solely as a finder and registered pursuant to this
19 act or acting as a finder under a transaction exempt pursuant to
20 section 402(b)(19). "Agent" does not include a person whose
21 transactions in this state are limited to only those transactions
22 set forth in section 15(h)(2) of the securities exchange act of
23 1934, 15 ~~U.S.C.~~ **USC** 78o. A partner, officer, or director of a
24 broker-dealer or issuer, or a person occupying a similar status or
25 performing similar functions, is an agent only if he or she
26 otherwise comes within this definition. The administrator may by
27 rule or order exclude other persons from the definition of the word

1 "agent".

2 (d) "Broker-dealer" means any person engaged in the business
3 of effecting transactions in securities for the account of others
4 or for his or her own account. "Broker-dealer" does not include (1)
5 an agent, (2) an issuer, (3) a bank, savings institution, or trust
6 company, (4) a person who has no place of business in this state if
7 (A) he or she effects transactions in this state exclusively with
8 or through (i) the issuers of the securities involved in the
9 transactions, (ii) other broker-dealers, or (iii) banks, savings
10 institutions, trust companies, insurance companies, investment
11 companies as defined in the investment company act of 1940, pension
12 or profit-sharing trusts, or other financial institutions or
13 institutional buyers, whether acting for themselves or as trustees,
14 or (B) during any period of 12 consecutive months he or she does
15 not direct more than 15 offers to sell or buy into this state in
16 any manner to persons other than those specified in clause (A) of
17 this subdivision, whether or not the offeror or any of the offerees
18 is then present in this state, or (5) a person acting solely as a
19 finder and registered pursuant to this act or acting as a finder
20 under a transaction exempt pursuant to section 402(b)(19). The
21 administrator may by rule or order exclude other persons from the
22 definition of the word "broker-dealer".

23 (e) "Commission" means any payment in cash, securities, or
24 goods for offering or selling, promise, or commitment to provide
25 payment in the future for offering or selling, or any other similar
26 payment. Commission does not include a real estate commission
27 commensurate with fees paid in the area for similar services, paid

1 to licensed real estate brokers solely for real estate services
2 which have been rendered, or payment by a person to a lawyer or
3 accountant in connection with advice or recommendations made by a
4 lawyer or accountant to the client with whom the lawyer or
5 accountant has an established professional relationship, if
6 disclosure of the payment and the interest of the lawyer or
7 accountant in the transaction or in the issuer or any affiliate of
8 the issuer, is made in writing to the client before the sale.

9 Officers, directors, and partners of an issuer or purchaser, or
10 persons occupying a similar status shall not be considered a finder
11 if their contact was purely incidental and their compensation was
12 not directly or indirectly tied to or conditioned upon involvement
13 in securities solicitation or purchase.

14 (f) "Direct or indirect compensation or remuneration" means
15 any payment, receipt or use of proceeds of an offering for the
16 benefit of the promoter, general partners, officers or directors,
17 or persons occupying similar positions or their affiliates, any
18 receipt, payment, or use of securities or goods by those persons at
19 less than the amount public investors paid for the securities or
20 goods, or any markup charged on sale of property to the entity
21 raising capital, any advantageous contractual relationships, any
22 real estate commission, or other similar payments or arrangements
23 to those persons.

24 (g) "Federally covered adviser" means a person that is
25 registered under section 203 of the investment advisers act of
26 1940, **15 USC 80B-3**. The term does not include a person excluded
27 from the definition of investment adviser under subdivision (l)(1),

1 (2), (3), (4), (5), (6), (7), (8), (9), or (11).

2 (h) "Federally covered security" means any security that is a
3 "covered security" under the securities act of 1933 or rules or
4 regulations promulgated under that act.

5 (i) "Finder" means a person who, for consideration,
6 participates in the offer to sell, sale, or purchase of securities
7 or commodities by locating, introducing, or referring potential
8 purchasers or sellers. Finder does not include a person whose
9 actions are solely incidental to a transaction exempt pursuant to
10 section 402(b)(19). The administrator may by rule or order exclude
11 other persons from this definition.

12 (j) "Fraud", "deceit", and "defraud" are not limited to
13 common-law deceit.

14 (k) "Guaranteed" means guaranteed as to payment of principal,
15 interest, or dividends.

16 (l) "Investment adviser" means any person who, for
17 consideration, engages in the business of advising others, either
18 directly or through publications or writings, as to the value of
19 securities, or as to the advisability of investing in, purchasing,
20 or selling securities, who, for consideration and as a part of a
21 regular business, issues or promulgates analyses or reports
22 concerning securities, or who acts as a finder in conjunction with
23 the offer, sale, or purchase of a security. "Investment adviser"
24 does not include any of the following:

25 (1) A bank, savings institution, or trust company.

26 (2) A lawyer, accountant, engineer, geologist, geophysicist,
27 or teacher whose performance of these services is solely incidental

1 to the practice of his or her profession.

2 (3) A broker-dealer or a registered agent acting on behalf of
3 a broker-dealer whose performance of these services is solely
4 incidental to the conduct of his or her business as a broker-dealer
5 and who receives no special compensation for the services.

6 (4) A publisher, employee, or columnist of a newspaper, news
7 magazine, or business or financial publication, or an owner,
8 operator, producer, or employee of a cable, radio, or television
9 network, station, or production facility if, in either case, the
10 financial or business news published or disseminated is made
11 available to the general public and the content does not consist of
12 rendering advice on the basis of the specific investment situation
13 of a client.

14 (5) A person who has no place of business in this state if
15 either of the following applies:

16 (A) His or her only clients in this state are other investment
17 advisers, federally covered advisers, broker-dealers, banks,
18 savings institutions, trust companies, insurance companies,
19 investment companies as defined in the investment company act of
20 1940, pension or profit-sharing trusts the assets of which are
21 managed by a bank or trust company or other institutional manager,
22 or other financial institutions or institutional buyers, whether
23 acting for themselves or as trustees.

24 (B) During any period of 12 consecutive months he or she does
25 not have more than 5 clients in this state other than those
26 specified in subparagraph (A).

27 (6) A person excluded from the definition of investment

1 adviser under section 202(a)(11) of the investment advisers act of
2 1940, 15 ~~U.S.C.~~ **USC** 80b-2.

3 (7) Any other persons not within the intent of this
4 subdivision as the administrator may by rule or order designate.

5 (8) A trustee whose custody of assets is pursuant to judicial
6 appointment, or appointment under a trust indenture or agreement,
7 and who does not hold himself or herself out to the general public
8 as giving advice to others with respect to securities and who
9 maintains close contact with the personal financial affairs of his
10 or her clients as a part of his or her fiduciary responsibilities,
11 or a person who gives advice only to such a trustee.

12 (9) A county treasurer acting pursuant to his or her authority
13 under the local government investment pool act, 1985 PA 121, MCL
14 129.141 to 129.150.

15 (10) A person who is a federally covered adviser.

16 (11) A person who is employed by or associated with an
17 investment adviser.

18 (m) "Investment adviser representative" means a partner,
19 officer, or director, or a person occupying a similar status or
20 performing similar functions, or other individual except a clerical
21 or ministerial employee or other employee or associate designated
22 by the administrator by rule or order as within the intent of this
23 subsection, who is employed by or associated with either of the
24 following:

25 (1) An investment adviser that is registered or required to be
26 registered under this act and who does any of the following:

27 (i) Makes any recommendations or otherwise renders advice

1 regarding securities.

2 (ii) Manages accounts or portfolios of clients.

3 (iii) Determines which recommendation or advice regarding
4 securities should be given.

5 (iv) Solicits, offers, or negotiates for the sale of or sells
6 investment advisory services.

7 (v) Supervises employees who perform any of the activities
8 described in subparagraph (i), (ii), (iii), or (iv).

9 (2) A federally covered adviser that is subject to section
10 203A ~~of title II~~ of the investment advisers act of 1940, 15
11 ~~U.S.C.~~ **USC** 80b-3a, and is designated by the administrator by rule
12 or order.

13 (n) "Investment advisers act of 1940" means the investment
14 advisers act of 1940, title II of chapter 686, ~~54 Stat. 847,~~ 15
15 ~~U.S.C.~~ **USC** 80b-1 to 80b-21.

16 (o) "Investment company act of 1940" means the investment
17 company act of 1940, title I of chapter 686, ~~54 Stat. 789,~~ 15
18 ~~U.S.C.~~ **USC** 80a-1 to ~~80a-3 and 80a-4 to~~ 80a-64.

19 (p) "Issuer" means any person who issues or proposes to issue
20 any security, except that:

21 (1) For certificates of deposit, voting-trust certificates or
22 collateral-trust certificates, or with respect to certificates of
23 interest or shares in an unincorporated investment trust not having
24 a board of directors, or persons performing similar functions or of
25 the fixed, restricted management or unit type, the term "issuer"
26 means the person or persons performing the acts and assuming the
27 duties of depositor or manager pursuant to the provisions of the

1 trust or other agreement or instrument under which the security is
2 issued.

3 (2) For certificates of interest or participation in oil, gas,
4 or mining titles or leases, or in payments out of production under
5 titles or leases, the term "issuer" means the owner of the oil,
6 gas, or mining titles or leases or payments out of production or
7 any fractional part thereof who creates and sells certificates of
8 interest or participation therein.

9 (q) "Nonissuer" means not directly or indirectly for the
10 benefit of the issuer. A sale of securities shall be considered to
11 be indirectly for the benefit of the issuer if all of the following
12 conditions are met:

13 (1) The sale is directly or indirectly made for the benefit of
14 a director or executive officer of the issuer, or a person
15 occupying a similar status or performing similar functions, or a
16 beneficial owner of 10% or more of any class of equity securities
17 of the issuer.

18 (2) The sale, together with all sales made in this state by or
19 for the benefit of the issuer during the 6-month period immediately
20 before the date of the sale, otherwise than pursuant to a
21 registration statement or exemption order under this act, exceeds
22 1% of the outstanding securities of the class of securities being
23 sold.

24 (3) The securities are not of a class that has been designated
25 by the administrator as eligible for trading in this state.

26 (r) "Notice filing" means the documents filed with the
27 administrator under section 202a or 308, or both, as applicable.

1 (s) "Person" means an individual, a corporation, a
2 partnership, an association, a joint-stock company, a trust where
3 the interests of the beneficiaries are evidenced by a security, an
4 unincorporated organization, a government, or a political
5 subdivision of a government.

6 (t) "Promoter" means a person who, acting alone or in
7 conjunction with 1 or more persons, directly or indirectly takes
8 the initiative in founding and organizing the business or
9 enterprise of an issuer; or a person who, in connection with the
10 founding or organizing of the business or enterprise of an issuer,
11 directly or indirectly receives in consideration of services or
12 property, 10% or more of the proceeds from the sale of any class of
13 securities or 10% or more of the equity interest in the issuer
14 after the offering is complete. However, a person who receives such
15 an amount of securities or proceeds either solely as underwriting
16 commissions pursuant to an offering of securities registered under
17 this act or solely in consideration of property or legal or
18 accounting services shall not be considered a promoter within the
19 meaning of this subsection if the person does not otherwise take
20 part in founding and organizing the enterprise.

21 (u) "Public utility holding company act of 1935" means the
22 public utility holding company act of 1935, title I of chapter 687,
23 ~~49 Stat. 838~~ **15 USC 79 TO 79Z-6.**

24 (v) (1) "Sale" or "sell" includes every contract of sale of,
25 contract to sell, or disposition of a security or interest in a
26 security for value.

27 (2) "Offer" or "offer to sell" includes every attempt or offer

1 to dispose of, or solicitation of an offer to buy, a security or
2 interest in a security for value.

3 (3) Any security given or delivered with, or as a bonus on
4 account of, any purchase of securities or any other thing is
5 considered to constitute part of the subject of the purchase and to
6 have been offered and sold for value.

7 (4) A purported gift of assessable stock is considered to
8 involve an offer and sale.

9 (5) Every sale or offer of a warrant or right to purchase or
10 subscribe to another security of the same or another issuer, as
11 well as every sale or offer of a security which gives the holder a
12 present or future right or privilege to convert into another
13 security of the same or another issuer, is considered to include an
14 offer of the other security.

15 (6) The terms defined in this subdivision do not include:

16 (A) Any stock dividend, whether the corporation distributing
17 the dividend is the issuer of the stock or not, if nothing of value
18 is given by stockholders for the dividend other than the surrender
19 of a right to a cash or property dividend when each stockholder may
20 elect to take the dividend in cash or property or in stock.

21 (B) Any act incident to a judicially approved reorganization
22 in which a security is issued in exchange for 1 or more outstanding
23 securities, claims, or property interests, or partly in exchange
24 and partly for cash.

25 (w) "Securities act of 1933" means the securities act of 1933,
26 title I of chapter 38, ~~48 Stat. 74,~~ 15 ~~U.S.C.~~ **USC** 77a to ~~77r~~
27 ~~and 77s to~~ 77aa.

(x) "Securities exchange act of 1934" means the securities exchange act of 1934, ~~chapter 404, 48 Stat. 881~~ **15 USC 78A TO 78MM.**

(y) "Securities investor protection act of 1970" means the securities investor protection act of 1970, ~~Public Law 91-598, 84 Stat. 1636~~ **15 USC 78AAA TO 78III.**

(z) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; **VIATICAL SETTLEMENT INVESTMENT**; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" includes any contractual or quasi contractual arrangement pursuant to which: (1) a person furnishes capital, other than services, to an issuer; (2) a portion of that capital is subjected to the risks of the issuer's enterprise; (3) the furnishing of that capital is induced by the representations of an issuer, promoter, or their affiliates which give rise to a reasonable understanding that a valuable tangible benefit will accrue to the person furnishing the capital as a result of the operation of the enterprise; (4) the person furnishing the capital

1 does not intend to be actively involved in the management of the
2 enterprise in a meaningful way; and (5) a promoter or its
3 affiliates anticipate, at the time the capital is furnished, that
4 financial gain may be realized as a result thereof. "Security" does
5 not include an insurance or endowment policy or annuity contract
6 under which an insurance company promises to pay money either in a
7 lump sum or periodically for life or some other specified period or
8 a commodity contract. The administrator may exclude by rule or by
9 order other transactions or agreements from the definition of the
10 word "security".

11 (aa) "Small business investment act of 1958" means the small
12 business investment act of 1958, ~~Public Law 85-699, 72 Stat. 689~~
13 **15 USC 661 TO 697G.**

14 (bb) "State" means any state, territory, or possession of the
15 United States, the District of Columbia, and Puerto Rico.

16 **(CC) "VIATICAL SETTLEMENT INVESTMENT" MEANS A CONTRACTUAL**
17 **RIGHT TO RECEIVE ANY PORTION OF A DEATH BENEFIT OR OWNERSHIP OF A**
18 **LIFE INSURANCE POLICY OR CERTIFICATE FOR CONSIDERATION THAT IS LESS**
19 **THAN THE EXPECTED DEATH BENEFIT OF THE LIFE INSURANCE POLICY OR**
20 **CERTIFICATE. VIATICAL SETTLEMENT INVESTMENT DOES NOT INCLUDE ANY OF**
21 **THE FOLLOWING:**

22 **(i) A LIFE SETTLEMENT CONTRACT BETWEEN A SELLER AND A LIFE**
23 **SETTLEMENT PROVIDER. AS USED IN THIS SUBPARAGRAPH, "LIFE SETTLEMENT**
24 **CONTRACT", "LIFE SETTLEMENT PROVIDER", AND "SELLER" MEAN THOSE**
25 **TERMS AS DEFINED IN SECTION 1 OF 1996 PA 386, MCL 550.521.**

26 **(ii) A TRANSFER OF OWNERSHIP OR BENEFICIAL INTEREST IN A POLICY**
27 **FROM A LIFE SETTLEMENT PROVIDER TO ANOTHER LIFE SETTLEMENT PROVIDER**

1 OR TO ANY LEGAL ENTITY FORMED SOLELY FOR THE PURPOSE OF HOLDING
2 OWNERSHIP OR BENEFICIAL INTEREST IN A POLICY OR MORE THAN 1 POLICY.
3 AS USED IN THIS SUBPARAGRAPH, "LIFE SETTLEMENT PROVIDER" AND
4 "POLICY" MEAN THOSE TERMS AS DEFINED IN SECTION 1 OF 1996 PA 386,
5 MCL 550.521.

6 (iii) A BONA FIDE ASSIGNMENT OF A LIFE INSURANCE POLICY TO A
7 BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR
8 OTHER LICENSED LENDING INSTITUTION AS COLLATERAL FOR A LOAN.

9 (iv) THE EXERCISE OF ACCELERATED BENEFITS UNDER THE TERMS OF A
10 LIFE INSURANCE POLICY ISSUED IN ACCORDANCE WITH THE INSURANCE CODE
11 OF 1956, 1956 PA 218, MCL 500.100 TO 500.8302.

12 Enacting section 1. This amendatory act does not take effect
13 unless Senate Bill No.____ or House Bill No. 6060(request no.
14 03161'05) of the 93rd Legislature is enacted into law.