

Legislative Analysis



UPDATE REFERENCES TO THE UNIFORM SECURITIES ACT (2002) IN VARIOUS STATUTES

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Senate Bill 700

Sponsor: Sen. Alan L. Cropsey

Senate Bill 701

Sponsor: Sen. Randy Richardville

Senate Bill 703

Sponsor: Sen. Roger Kahn, M.D.

Senate Bill 706

Sponsor: Sen. Dennis Olshove

Senate Bill 707

Sponsor: Sen. Buzz Thomas

Senate Bill 710

Sponsor: Sen. Wayne Kuipers

Senate Bill 712

Sponsor: Sen. Patricia L. Birkholz

House Bill 4683

Sponsor: Rep. Roy Schmidt

House Bill 4684

Sponsor: Rep. David Nathan

House Bill 4686

Sponsor: Rep. Goeff Hansen

House Bill 4687

Sponsor: Rep. Tonya Schuitmaker

House Bill 4695

Sponsor: Rep. Ed Clemente

House Bill 4696

Sponsor: Rep. Andy Coulouris

Senate Committee: Banking and Financial Institutions

House Committee: Commerce

Complete to 8-31-09

A SUMMARY OF SENATE BILLS 700-701, 703, 706-707, 710, & 712 AS REPORTED FROM HOUSE COMMITTEE AND HOUSE BILLS 4683-4684, 4686-4687, & 4694-4695 AS ENROLLED

The bills in this package each amend a separate act to update references in order to make them apply to the new Uniform Securities Act. These Senate bills are part of a larger package of bills that include House Bills 4683-4684, 4686-4688, and 4695-4696.

Public Act 551 of 2008 (House Bill 5008 of 2007-08) created a new Uniform Securities Act. The new act takes effect October 1, 2009. It will repeal the old Uniform Securities Act, Public Act 265 of 1964. The new act is based on a uniform model law developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). It is officially referred to as the Uniform Securities Act (2002), with the date referring to the year the model act was adopted by NCCUSL. The administrator of the new act is the

Office of Financial and Insurance Regulation (OFIR) within the Department of Energy, Labor and Economic Growth.

Similar bills were introduced in the 2007-08 legislative session as part of the overall Uniform Securities package of bills, but only the primary bill and an associated criminal penalty bill were enacted.

According to the NCCUSL, the model act is designed to coordinate federal and state securities legislation. The purpose of such regulation is to prevent fraudulent sales of securities to investors. By "securities," the act means notes; stocks; treasury stocks; security futures; bonds; debentures; evidences of indebtedness; certificates of interest or participation in profit sharing agreements; collateral trust agreements; interests in oil, gas, or mineral rights; puts, calls, straddles, and options on securities, certificates of deposits, or groups and indexes of securities; investments in viatical or life settlement agreements; and similar instruments. (For more information, see **Background Information**.)

The following describes the acts being amended by this package of Senate bills.

Senate Bill 700 would amend the Michigan Consumer Protection Act (MCL 445.920).

Senate Bill 701 would amend Public Act 227 of 1971 (MCL 445.111), which deals with home solicitation sales.

Senate Bill 703 would amend the Nonprofit Corporation Act (MCL 450.3137) to address cooperative nonvoting investment certificates and bonds.

Senate Bill 706 would amend the Savings and Loan Act of 1980 (MCL 491.515) to update the definition of "securities."

Senate Bill 707 would amend the Michigan Education Trust Act (MCL 390.1439), which exempts advance tuition payment contracts from the Uniform Securities Act.

Senate Bill 710 would amend the Credit Services Protection Act (MCL 445.1822).

Senate Bill 712 would amend the Natural Resources and Environmental Protection Act (MCL 324.21528 and 50510), which exempts certain bonds and notes from having to be filed under the state securities law.

The House bills in this package have passed both the House and Senate and have been presented to the governor. They are:

House Bill 4683 would amend the Professional Service Corporation Act (MCL 450.228).

House Bill 4684 would amend the Michigan Export Development Act (MCL 447.160).

House Bill 4686 would amend the Michigan Penal Code (MCL 750.159g and 411j) to include certain violations of the securities law in the definition of "racketeering."

House Bill 4687 would amend the Revised Judicature Act of 1961 (600.4701) to amend the definition of "crime" to update the securities act reference.

House Bill 4689 would amend the Michigan Education Trust Act (MCL 390.1439), which exempts advance tuition payment contracts from the Uniform Securities Act.

House Bill 4695 would amend the Public Employee Retirement System Investment Act (MCL 38.1133), under which investment fiduciaries have to be registered under state securities law.

House Bill 4696 would amend the Michigan Strategic Fund Act (MCL 125.2023), which exempts the fund's bonds and notes from filing requirements in the state securities law.

FISCAL IMPACT:

The bills would have no fiscal impact on the state or local governmental units.

BACKGROUND INFORMATION:

According to information from the NCCUSL, the new Uniform Securities Act (2002) "will give states regulatory and enforcement authority that avoids duplication of regulatory effort and blends with federal regulation and enforcement in a more efficient system for investor protection." The NCCUSL lists the following as key components of the model act: (1) the registration of securities by means of three methods (notice, coordination, and qualification) to clarify and simplify the process for both regulators and industry; (2) the regulation of broker-dealers, investment advisors, and their agents and representatives through registration in the states where they do business; (3) expanded enforcement powers, including civil and criminal actions against perpetrators of fraud, including court and administrative action; (4) investigatory and subpoena powers for state securities administrators; (5) criminal penalties, which are set by the state; (6) investor education; and (7) electronic filing facilitation.

The model Uniform Securities Act (2002) is divided into seven articles as follows.

Article 1 (General Provisions) deals with definitions and references to federal statutes and federal agencies, and provides the act's short title.

Article 2 (Exemptions from Registration of Securities) provides for exempt securities and exempt transactions and the denial, suspension, revocation, condition, and limitation of exemptions.

Article 3 (Registration of Securities) addresses notice filings; securities registration by coordination; securities registration by qualification; and securities registration filings; as well as the denial, suspension, and revocation of securities registration.

Article 4 (Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers) addresses registration requirements and exemptions for each classification of professional; succession and change in registration; filing fees; post-registration requirements; and denials,

revocations, suspensions, withdrawals, restrictions, conditions, and limitations related to registration.

Article 5 (Fraud and Liabilities) deals with prohibited conduct in providing investment advice; evidentiary burden; the filing of sales and advertising literature; misleading filings; and misrepresentations concerning registration or exemption, immunities, criminal penalties, civil liability, and rescission offers.

Article 6 (Administration and Judicial Review) addresses matters related to administration; investigation and subpoenas; civil and administrative enforcement; rules, orders, interpretative opinions, and orders; public records and confidentiality; uniformity and cooperation with other agencies; judicial review; jurisdiction; and service of process.

Article 7 (Transition) deals with the repeal of existing legislation and the effective date of the new act, as well as the application of the new act to existing proceedings and existing rights and duties.

The criminal provisions in the new Uniform Securities Act (2002) make a willful violation of the act or a rule adopted or an order issued under the act a felony punishable by imprisonment for up to 10 years and/or a fine of up to \$500,000 for each violation. An individual convicted of violating a rule or order could be fined but not imprisoned if he or she did not have knowledge of the rule or order. The attorney general or the proper prosecuting attorney could institute appropriate criminal proceedings with or without a reference from the state administrator. The act does not limit the power of the state to punish a person for conduct that constituted a crime under other state laws.

All civil fines, costs of investigation, administrative assessments received by OFIR under the act are to be deposited in a newly created Securities Investor Education and Training Fund. The Fund is to be used in developing and implementing investor education initiatives to inform the public about investing in securities with particular emphasis on the prevention and detection of securities fraud. If the amount in the Fund at the close of any fiscal year is \$1 million or less, the money would remain in the Fund and not lapse to the General Fund. Amounts exceeding \$1 million would be credited to the General Fund.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.