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BILL ANALYSIS



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House Bill 4996 (Substitute S-2 as reported by the Committee of the Whole)

Sponsor: Representative Nancy Jenkins

House Committee: Commerce

Senate Committee: Banking and Financial Institutions

CONTENT

The bill would amend Article 2 of the Uniform Securities Act, which governs exemptions from securities registration requirements, to do the following:

- Provide an exemption for a Regulation A offering under the Federal Securities Act.
- Provide an exemption for a sale or offer that would qualify as an intrastate offering under Federal law, if the offering met various criteria.
- Revise an existing exemption for transactions in which there are not more than 25 purchasers in the State in a 12-month period.
- Revise the definition of "institutional investor".

Regulation A Exemption. The Federal exemption for Regulation A offerings generally applies to small public offerings of securities. To qualify for the Regulation A exemption under the bill, an offer or sale would have to meet the following requirements: 1) the issuer would have to have filed an SEC Form 1A with the Securities and Exchange Commission (SEC); 2) the issuer would have to timely file written or electronic notice with the Department of Licensing and Regulatory Affairs (LARA); 3) the sum of all consideration for all sales in reliance on the exemption could not be greater than the amount set forth in Federal regulations; and 4) the issuer could not accept more than \$10,000 from any single purchaser unless the purchaser was an accredited investor. Every fifth year, LARA would have to adjust the \$10,000 limit to reflect the Consumer Price Index (CPI).

Intrastate Offerings. To qualify for this exemption under the bill, an issuer would have to be an entity established under Michigan law and authorized to do business in the State. The transaction would have to meet requirements for the Federal exemption for intrastate offerings under the Federal Securities Act, and SEC Rule 147, including the requirements for determining whether an offeree or purchaser is a state resident. The maximum amount of consideration for securities sales in reliance on the exemption would be \$2.0 million if the issuer made financial statements available to purchasers and LARA, and \$1.0 million if statements were not available. The issuer could not accept more than \$10,000 from any single purchaser unless the purchaser was an accredited investor. Every fifth year, LARA would have to adjust the dollar amounts to reflect the CPI.

An agreement to purchase would be considered a representation that the purchaser was a State resident. If the representation were false, the agreement would be void. If a purchaser resold a security within nine months after the closing to a person who was not a State resident, the agreement would be void. In either case, the issuer could recover damages that would be capped at the amount of the person's investment in the security.

The issuer would have to provide a disclosure statement to each prospective purchaser, and would have to include specific information about the offering.

At least 10 days before an issuer made an offer of securities in reliance on the intrastate exemption or used any publicly available website in connection with a securities offer, the issuer would have to file with LARA notice that included a filing fee, a copy of the disclosure statement, and an escrow agreement. The escrow agreement would have to provide that offering proceeds would be released to the issuer only when a minimum target offering was reached. All securities purchase payments would have to be directed to and held by the bank or depository institution.

An issuer could not be an investment company, and could not pay certain personnel for offering or selling securities unless the person was a registered broker-dealer, investment adviser, or investment advisor representative under Article 4. The term of an offering could not exceed 12 months after the date of the first offer. The exemption could not be used in conjunction with any other exemption under Article 2, except offers and sales to controlling persons would not count toward the \$10,000, \$1.0 million, and \$2.0 million limits noted above.

The exemption would not apply if an issuer or offering were subject to any disqualification under LARA rules or provisions contained in Rule 262 as promulgated under the Federal Securities Act. However, the exemption still would apply if both of the following generally were met: 1) LARA determined that it was unnecessary to deny it; and 2) the issuer made factual inquiry regarding disqualification but did not know that a disqualification existed.

Except for Section 504, which pertains to filing sales and advertising literature, Article 5, which governs fraud and liabilities in securities, would apply to a violation of the intrastate offering exception provisions.

The Department could adopt rules to implement the intrastate offering exemption and to protect purchasers.

Existing Exemption. The Uniform Security Act provides an exemption from registration for certain offerings or sales in which, during any 12 consecutive months, there are not more than 25 purchasers in the State, other than institutional investors, Federal-covered investment advisors, or others exempted by rule or order under the Act. The bill instead would refer to 50 purchasers.

Institutional Investor. The Act's definition of "institutional investor" includes certain plans, trusts, organizations, and companies with total assets in excess of \$10 million. The bill would lower that amount to \$2.5 million.

MCL 451.2102a et al.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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Fiscal Analyst: Josh Sefton

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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.