

# SENATE BILL No. 891

April 14, 2016, Introduced by Senators BOOHER, HORN and ZORN and referred to the Committee on Banking and Financial Institutions.

A bill to amend 2008 PA 551, entitled "Uniform securities act (2002)," by amending section 202a (MCL 451.2202a), as added by 2013 PA 264.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 202a. (1) Except as otherwise provided in this act, an  
2 offer or sale of a security by an issuer is exempt from the  
3 requirements of sections 301 to 306 and 504 if the offer or sale  
4 meets all of the following requirements:

5           (a) The issuer of the security is an entity that is  
6 incorporated or organized under the laws of this state and is  
7 authorized to do business in this state.

8           (b) The transaction meets the requirements for the federal  
9 exemption for intrastate offerings under section 3(a)(11) of the  
10 securities act of 1933, 15 USC 77c(a)(11), and SEC rule 147, 17 CFR

1 230.147, including, but not limited to, the requirements for  
2 determining whether an offeree or purchaser is a resident of this  
3 state. All of the following apply concerning these requirements:

4 (i) Each of the following is prima facie evidence that an  
5 individual is a resident of this state:

6 (A) A valid operator's license, chauffeur's license, or  
7 official personal identification card issued by this state.

8 (B) A current Michigan voter registration.

9 (C) A signed affidavit as described in section 7cc(2) of the  
10 general property tax act, 1893 PA 206, MCL 211.7cc, that indicates  
11 that the purchaser owns and occupies property in this state as his  
12 or her principal residence.

13 (D) Any other record or documents issued by this state that  
14 establishes that the purchaser's principal residence is in this  
15 state.

16 (ii) The provisions of SEC rule 147, 17 CFR 230.147, apply in  
17 determining the residency of an offeree or purchaser that is a  
18 corporation, partnership, trust, or other form of business  
19 organization.

20 (iii) If a purchaser of a security that is exempt under this  
21 section resells that security within 9 months after the closing of  
22 the particular offering in which the purchaser obtained that  
23 security to a person that is not a resident of this state, the  
24 original investment agreement between the issuer and the purchaser  
25 is void. If an agreement to purchase, or the purchase of, a  
26 security is void under this subparagraph, the issuer may recover  
27 damages from the misrepresenting offeree or purchaser. These

1 damages include, but are not limited to, the issuer's expenses in  
2 resolving the misrepresentation. However, damages described in this  
3 subparagraph shall not exceed the amount of the person's investment  
4 in the security.

5 (c) The sum of all cash and other consideration to be received  
6 for all sales of the security in reliance on this exemption does  
7 not exceed the following amounts:

8 (i) One million dollars, less the aggregate amount received  
9 for all sales of securities by the issuer within the 12 months  
10 before the first offer or sale made in reliance on this exemption,  
11 if the issuer has not made available to each prospective purchaser  
12 and the administrator audited financial statements or reviewed  
13 financial statements for the issuer's most recently completed  
14 fiscal year, prepared by a certified public accountant, as defined  
15 in section 720 of the occupational code, 1980 PA 299, MCL 339.720,  
16 in accordance with the statements on auditing standards of the  
17 American ~~institute of certified public accountants~~ **INSTITUTE OF**  
18 **CERTIFIED PUBLIC ACCOUNTANTS** or the statements on standards for  
19 accounting and review services of the American ~~institute of~~  
20 ~~certified public accountants,~~ **INSTITUTE OF CERTIFIED PUBLIC**  
21 **ACCOUNTANTS**, as applicable.

22 (ii) Two million dollars, less the aggregate amount received  
23 for all sales of securities by the issuer within the 12 months  
24 before the first offer or sale made in reliance on this exemption,  
25 if the issuer has made available to each prospective purchaser and  
26 the administrator audited financial statements or reviewed  
27 financial statements for the issuer's most recently completed

1 fiscal year, prepared by a certified public accountant, as defined  
2 in section 720 of the occupational code, 1980 PA 299, MCL 339.720,  
3 in accordance with the statements on auditing standards of the  
4 American ~~institute of certified public accountants~~ **INSTITUTE OF**  
5 **CERTIFIED PUBLIC ACCOUNTANTS** or the statements on standards for  
6 accounting and review services of the American ~~institute of~~  
7 ~~certified public accountants,~~ **INSTITUTE OF CERTIFIED PUBLIC**  
8 **ACCOUNTANTS**, as applicable.

9 (iii) **FIVE MILLION DOLLARS, LESS THE AGGREGATE AMOUNT RECEIVED**  
10 **FOR ALL SALES OF SECURITIES BY THE ISSUER WITHIN THE 12 MONTHS**  
11 **BEFORE THE FIRST OFFER OR SALE MADE IN RELIANCE ON THIS EXEMPTION,**  
12 **IF ALL OF THE FOLLOWING ARE MET:**

13 (A) **THE ISSUER IS A STATE PUBLIC UNIVERSITY; OR IS, AND**  
14 **SUBMITS DOCUMENTATION TO THE ADMINISTRATOR SIGNED BY ALL OF THE**  
15 **PARTNERS THAT IT IS, A PERSON THAT IS IN PARTNERSHIP WITH A STATE**  
16 **PUBLIC UNIVERSITY OR COALITION OF STATE PUBLIC UNIVERSITIES AS PART**  
17 **OF A TECH TRANSFER PROGRAM.**

18 (B) **THE ISSUER FILES WITH THE ADMINISTRATOR, AND MAKES**  
19 **AVAILABLE ONLINE TO PROSPECTIVE PURCHASERS, A COPY OF THE ISSUER'S**  
20 **BUSINESS PLAN.**

21 (d) The issuer has not accepted more than \$10,000.00 from any  
22 single purchaser unless the purchaser is an accredited investor as  
23 defined by rule 501 of SEC regulation D, 17 CFR 230.501. The issuer  
24 may rely on confirmation that the purchaser is an accredited  
25 investor from a licensed broker-dealer or another third party in  
26 making a determination that the purchaser is an accredited  
27 investor.

1 (e) At least 10 days before an offer of securities is made in  
2 reliance on this exemption or the use of any publicly available  
3 website in connection with an offering of securities in reliance on  
4 this exemption, the issuer files a notice with the administrator,  
5 in writing or in electronic form as specified by the administrator,  
6 that contains all of the following:

7 (i) A notice of claim of exemption from registration,  
8 specifying that the issuer intends to conduct an offering in  
9 reliance on this exemption, accompanied by the filing fee specified  
10 in this section.

11 (ii) A copy of the disclosure statement to be provided to  
12 prospective investors in connection with the offering. The  
13 disclosure statement must contain all of the following:

14 (A) A description of the issuer, including its type of entity,  
15 the address and telephone number of its principal office, its  
16 formation history, its business plan, and the intended use of the  
17 offering proceeds, including any amounts to be paid, as  
18 compensation or otherwise, to any owner, executive officer,  
19 director, managing member, or other person occupying a similar  
20 status or performing similar functions on behalf of the issuer.

21 (B) The identity of each person that owns more than 10% of the  
22 ownership interests of any class of securities of the issuer.

23 (C) The identity of the executive officers, directors, and  
24 managing members of the issuer, and any other individuals who  
25 occupy similar status or perform similar functions in the name of  
26 and on behalf of the issuer, including their titles and their prior  
27 experience.

1 (D) The terms and conditions of the securities being offered  
2 and of any outstanding securities of the issuer, the minimum and  
3 maximum amount of securities being offered, if any, and either the  
4 percentage ownership of the issuer represented by the offered  
5 securities or the valuation of the issuer implied by the price of  
6 the offered securities.

7 (E) The identity of any person that the issuer has or intends  
8 to retain to assist the issuer in conducting the offering and sale  
9 of the securities, including the owner of any websites, if known,  
10 but excluding any person acting solely as an accountant or attorney  
11 and any employees whose primary job responsibilities involve the  
12 operating business of the issuer rather than assisting the issuer  
13 in raising capital, and for each person identified in response to  
14 this sub-subparagraph, a description of the consideration being  
15 paid to that person for that assistance.

16 (F) A description of any litigation or legal proceedings  
17 involving the issuer or its management.

18 (G) The name and address of any website that the issuer  
19 intends to use in connection with the offering, including its  
20 uniform resource locator or URL. If the issuer has not engaged a  
21 website described in this sub-subparagraph at the time the issuer  
22 files the disclosure statement described in this subparagraph with  
23 the administrator under this subdivision but subsequently does  
24 engage a website for use in connection with the offering, the  
25 issuer shall provide the information described in this sub-  
26 subparagraph to the administrator by filing a supplemental notice.

27 (iii) An escrow agreement with a bank or other depository

1 institution located in this state, in which the purchaser funds  
2 will be deposited, that provides that all offering proceeds will be  
3 released to the issuer only when the aggregate capital raised from  
4 all purchasers is equal to or greater than the minimum target  
5 offering amount specified in the disclosure statement as necessary  
6 to implement the business plan and that all purchasers will receive  
7 a return of their subscription funds if that target offering amount  
8 is not raised by the time stated in the disclosure statement. The  
9 bank or other depository institution may contract with the issuer  
10 to collect reasonable fees for its escrow services regardless of  
11 whether the target offering amount is reached.

12 (f) The issuer is not, either before or as a result of the  
13 offering, an investment company, as defined in section 3 of the  
14 investment company act of 1940, 15 USC 80a-3, or an entity that  
15 would be an investment company but for the exclusions provided in  
16 subsection (c) of that section, or subject to the reporting  
17 requirements of section 13 or 15(d) of the securities exchange act  
18 of 1934, 15 USC 78m and 78o(d).

19 (g) The issuer informs each prospective purchaser that the  
20 securities are not registered under federal or state securities  
21 laws and that the securities are subject to limitations on transfer  
22 or resale and displays the following legend conspicuously on the  
23 cover page of the disclosure statement:

24 "IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON  
25 THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING,  
26 INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT  
27 BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR

1 REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE  
2 NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS  
3 DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.  
4 THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND  
5 RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY  
6 SUBSECTION (E) OF SEC RULE 147, 17 CFR 230.147(E), AS PROMULGATED  
7 UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE  
8 STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION  
9 THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO  
10 BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE  
11 PERIOD OF TIME."

12 (h) The issuer requires each purchaser to certify in writing,  
13 and to include as part of that certification his or her signature,  
14 and his or her initials next to each paragraph of the  
15 certification, as follows: "I understand and acknowledge that:

16 I am investing in a high-risk, speculative business venture. I  
17 may lose all of my investment, and I can afford the loss of my  
18 investment.

19 This offering has not been reviewed or approved by any state  
20 or federal securities commission or other regulatory authority and  
21 that no regulatory authority has confirmed the accuracy or  
22 determined the adequacy of any disclosure made to me relating to  
23 this offering.

24 The securities I am acquiring in this offering are illiquid,  
25 that the securities are subject to possible dilution, that there is  
26 no ready market for the sale of those securities, that it may be  
27 difficult or impossible for me to sell or otherwise dispose of this

1 investment, and that, accordingly, I may be required to hold this  
2 investment indefinitely.

3 I may be subject to tax on my share of the taxable income and  
4 losses of the issuer, whether or not I have sold or otherwise  
5 disposed of my investment or received any dividends or other  
6 distributions from the issuer.

7 By entering into this transaction with the issuer, I am  
8 affirmatively representing myself as being a Michigan resident at  
9 the time that this contract is formed, and if this representation  
10 is subsequently shown to be false, the contract is void.

11 If I resell any of the securities I am acquiring in this  
12 offering to a person that is not a Michigan resident, within 9  
13 months after the closing of the offering, my contract with the  
14 issuer for the purchase of these securities is void."

15 (i) If the offer and sale of securities under this section is  
16 made through an internet website, all of the following requirements  
17 are met:

18 (i) Before any offer of an investment opportunity to residents  
19 of this state through the use of a website, the issuer provides to  
20 the website and to the administrator evidence that the issuer is  
21 organized under the laws of this state and that it is authorized to  
22 do business in this state.

23 (ii) The issuer obtains from each purchaser of a security  
24 under this section evidence that the purchaser is a resident of  
25 this state and, if applicable, an accredited investor.

26 (iii) The website operator files a written notice with the  
27 administrator that includes the website operator's name, business

1 address, and contact information and states that it is authorized  
2 to do business in this state and is being utilized to offer and  
3 sell securities under this exemption. Beginning 12 months after the  
4 date of the written notice, a website operator that has filed a  
5 written notice under this subparagraph shall annually notify the  
6 administrator in writing of any changes in the information provided  
7 to the administrator under this subparagraph.

8 (iv) The issuer and the website keep and maintain records of  
9 the offers and sales of securities made through the website and  
10 provide ready access to the records to the administrator on  
11 request. The administrator may access, inspect, and review any  
12 website described in this subdivision and its records.

13 (j) All payments for the purchase of securities are directed  
14 to and held by the bank or depository institution subject to the  
15 provisions of subdivision (e) (iii).

16 (k) Offers or sales of a security are not made through an  
17 internet website unless the website has filed the written notice  
18 required under subdivision (i) (iii) with the administrator.

19 (l) The issuer does not pay, directly or indirectly, any  
20 commission or remuneration to an executive officer, director,  
21 managing member, or other individual who has a similar status or  
22 performs similar functions in the name of and on behalf of the  
23 issuer for offering or selling the securities unless he or she is  
24 registered as a broker-dealer, investment adviser, or investment  
25 adviser representative under article 4. An executive officer,  
26 director, managing member, or other individual who has a similar  
27 status or performs similar functions in the name of and on behalf

1 of the issuer is exempt from the registration requirements under  
2 article 4 if he or she does not receive, directly or indirectly,  
3 any commission or remuneration for offering or selling securities  
4 of the issuer that are exempt from registration under this section.

5 (m) The issuer provides a copy of the disclosure statement  
6 provided to the administrator under subdivision (e) (ii) to each  
7 prospective purchaser at the time the offer of securities is made  
8 to the prospective purchaser. In addition to the information  
9 described in subdivision (e) (ii), the disclosure statement provided  
10 to the administrator and to prospective purchasers shall include  
11 additional information material to the offering, including, where  
12 appropriate, a discussion of significant factors that make the  
13 offering speculative or risky. This discussion must be concise and  
14 organized logically and should not present risks that could apply  
15 to any issuer or any offering.

16 (n) The term of the offering does not exceed 12 months after  
17 the date of the first offer.

18 (2) Every fifth year, the administrator shall cumulatively  
19 adjust each of the following dollar amounts to reflect the change  
20 in the consumer price index for all urban consumers published by  
21 the federal bureau of labor statistics:

22 (a) The dollar limitations provided in subsection (1) (c),  
23 rounding each dollar limitation to the nearest \$50,000.00.

24 (b) The dollar limitation provided in subsection (1) (d) and  
25 section 201(1) (y) (iv), rounding that dollar limitation to the  
26 nearest \$100.00.

27 (3) If the offer and sale of a security of an issuer is exempt

1 under this section, the issuer shall provide a quarterly report to  
2 the issuer's purchasers until none of the securities issued under  
3 this section are outstanding. All of the following apply to the  
4 quarterly report described in this subsection:

5 (a) The issuer shall provide the report free of charge to the  
6 purchasers.

7 (b) An issuer may satisfy the report requirement under this  
8 subsection by making the information available on an internet  
9 website if the information is made available within 45 days after  
10 the end of each fiscal quarter and remains available until the next  
11 quarterly report is issued.

12 (c) The issuer shall file each report with the administrator  
13 and must provide a written copy of the report to any purchaser on  
14 request.

15 (d) The report must include all of the following:

16 (i) The compensation received by each director and executive  
17 officer of the issuer, including cash compensation earned since the  
18 previous report and on an annual basis and any bonuses, stock  
19 options, other rights to receive securities of the issuer or any  
20 affiliate of the issuer, or other compensation received.

21 (ii) An analysis by management of the issuer of the business  
22 operations and financial condition of the issuer.

23 (4) The exemption provided in this section shall not be used  
24 in conjunction with any other exemption under this article, except  
25 offers and sales to controlling persons shall not count toward the  
26 limitation in subsection (1)(c).

27 (5) The exemption described in this section does not apply if

1 an issuer or person that is affiliated with the issuer or offering  
2 is subject to any disqualification established by the administrator  
3 by rule or contained in rule 262 as promulgated under the  
4 securities act of 1933, 17 CFR 230.262. However, this subsection  
5 does not apply if both of the following are met:

6 (a) On a showing of good cause and without prejudice to any  
7 other action by the administrator, the administrator determines  
8 that it is not necessary under the circumstances that an exemption  
9 be denied.

10 (b) The issuer establishes that it made factual inquiry into  
11 whether any disqualification existed under this subsection but did  
12 not know, and in the exercise of reasonable care could not have  
13 known, that a disqualification existed under this subsection. The  
14 nature and scope of the requisite inquiry will vary based on the  
15 circumstances of the issuer and the other offering participants.

16 (6) The administrator may adopt rules to implement the  
17 provisions of this section and to protect purchasers that purchase  
18 securities that are exempt from registration under this section.

19 (7) The administrator shall charge a nonrefundable filing fee  
20 of \$100.00 for filing an exemption notice required under subsection  
21 (1). The fees paid to the administrator under this subsection shall  
22 be used to pay the costs incurred in administering and enforcing  
23 this act.

24 (8) A website through which an offer or sale of securities  
25 under this section is made is not subject to the broker-dealer,  
26 investment adviser, or investment adviser representative  
27 registration requirements under article 4 if the website meets all

1 of the following conditions:

2 (a) It does not offer investment advice or recommendations.

3 (b) It does not solicit purchases, sales, or offers to buy the  
4 securities offered or displayed on the website.

5 (c) It does not compensate employees, agents, or other persons  
6 for the solicitation or based on the sale of securities displayed  
7 or referenced on the website.

8 (d) It does not hold, manage, possess, or otherwise handle  
9 purchaser funds or securities.

10 (e) It does not engage in any other activities that the  
11 administrator by rule determines are inappropriate for an exemption  
12 from the registration requirements under article 4.

13 (9) Except for section 504, article 5 applies to a violation  
14 of this section, including a violation concerning website  
15 operation.

16 (10) As used in this section: ~~"controlling~~

17 (A) **"CONTROLLING person"** means an officer, director, partner,  
18 or trustee, or another individual who has similar status or  
19 performs similar functions, of or for the issuer or to a person  
20 that owns 10% or more of the outstanding shares of any class or  
21 classes of securities of the issuer.

22 (B) **"STATE PUBLIC UNIVERSITY" MEANS A STATE UNIVERSITY**  
23 **DESCRIBED IN SECTION 4, 5, OR 6 OF ARTICLE VIII OF THE STATE**  
24 **CONSTITUTION OF 1963.**

25 (C) **"TECH TRANSFER PROGRAM" MEANS A PROGRAM OPERATED BY A**  
26 **STATE PUBLIC UNIVERSITY FOR THE PURPOSE OF TRANSFERRING**  
27 **TECHNOLOGIES, METHODS OF MANUFACTURING, INNOVATIVE PRODUCTS OR**

1 INVENTIONS, OR ENTITIES FROM THEIR USE WITHIN THE UNIVERSITY  
2 PROGRAM TO COMMERCIAL USE.

3 (11) The exemption described in this section may be referred  
4 to as the "Michigan invests locally exemption".

5 Enacting section 1. This amendatory act takes effect 90 days  
6 after the date it is enacted into law.