

RESIDENCY REQUIREMENT FOR REGISTRATION EXEMPTIONS WHEN ISSUING SECURITIES

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House Bill 4305 as introduced
Sponsor: Rep. Bronna Kahle
Committee: Commerce and Trade
Complete to 5-1-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4305 would amend the Uniform Securities Act (MCL 451.2202a and 541.2451) to reference federal securities rules for use in determining whether a Michigan company is exempt from certain state filing and registration requirements when issuing securities.

(The Uniform Securities Act (2002) is based on a model act from the Uniform Law Commission of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and is designed to coordinate federal and state securities legislation. The purpose of such regulation is to prevent fraudulent sales of securities to investors.)

Specifically, the bill would do the following (**bold** added to show changes described in the bill):

- Add that the issuer must be "**a resident of this state under SEC rule 147, 17 CFR 230.147, or SEC Rule 147A, 17CFR 230.147a**" in order to be exempt from state-level filing and registration requirements for a sale of security.
- Add that the transaction must meet "**the federal exemption for intrastate offerings under 15 USC 77 and SEC Rule 147A, 17 CFR 230.147A**", or an existing standard.
- Add that the provisions of SEC rule 147, 17 CFR 230.147, "**or SEC rule 147A, 17 CFR 230.147A, as applicable,**" apply in determining the residence of an offeree or purchaser that is a corporation, partnership, trust, or other form of business organization.
- Reduce from 9 months to **6 months** the time period in which an investment agreement is void if the purchaser sells the security to a person that is not a resident of this state.
- Add a reference to "**Subsection (E) of SEC rule 147A, 17 CFR 230.147A(E)**" in a disclosure statement that must be provided to prospective purchasers.

BRIEF BACKGROUND:

The U.S. Securities and Exchange Commission (SEC) adopted amendments to Rule 147 and adopted the new Rule 147A at its October 26, 2016 meeting. The changes would take effect 150 days after publication in the Federal Register.

According to the SEC's website, Rule 147, 147A, and the amendments serve the following purpose:

The adoption of new Rule 147A and the amendments to Securities Act Rule 147 would update and modernize the existing intrastate offering framework that permits companies to raise money from investors within their state without concurrently registering the offers and sales at the federal level.

Amended Rule 147 would remain a safe harbor under Section 3(a)(11) of the Securities Act, so that issuers may continue to use the rule for securities offerings relying on current state law exemptions. New Rule 147A would be substantially identical to Rule 147 except that it would allow offers to be accessible to out-of-state residents and for companies to be incorporated or organized out-of-state.

Both new Rule 147A and amended Rule 147 would include the following provisions:

- A requirement that the issuer has its "principal place of business" in-state and satisfies at least one "doing business" requirement that would demonstrate the in-state nature of the issuer's business*
- A new "reasonable belief" standard for issuers to rely on in determining the residence of the purchaser at the time of the sale of securities*
- A requirement that issuers obtain a written representation from each purchaser as to residency*
- A limit on resales to persons residing within the state or territory of the offering for a period of six months from the date of the sale by the issuer to the purchaser*
- An integration safe harbor that would include any prior offers or sales of securities by the issuer made under another provision, as well as certain subsequent offers or sales of securities by the issuer occurring after the completion of the offering*
- Legend requirements to offerees and purchasers about the limits on resales¹*

FISCAL IMPACT:

House Bill 4305 would not have a significant impact on the Department of Licensing and Regulatory Affairs or on other units of state and local government.

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

¹ <https://www.sec.gov/news/pressrelease/2016-226.html> "SEC Adopts Final Rules to Facilitate Intrastate and Regional Securities Offerings"