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BILL ANALYSIS



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House Bill 4305 (as passed by the House)
Sponsor: Representative Bronna Kahle
House Committee: Commerce and Trade
Senate Committee: Commerce

Date Completed: 9-26-17

CONTENT

The bill would amend Article 2 of the Uniform Securities Act, which governs exemptions from registration requirements, to include references to amended and new U.S. Securities and Exchange Commission (SEC) rules for determining whether intrastate sales or offers of securities meet certain residency requirements. The bill also would add reference to these SEC rules to the definition of "intrastate offering exemption" in Article 4A (Michigan Investment Markets).

Article 2 Amendments

Issuer Residency. Section 202a of the Act specifies that, except as otherwise provided, an offer or sale of a security by an issuer is exempt from Sections 301 to 306 and 504, if the offer or sale meets certain requirements (described below).

(Under Section 301 of the Act, a person may not offer or sell a security in Michigan unless one or more of the following are met: 1) the security is a "federal covered security"; 2) the security, transaction, or offer is exempted from registration under Sections 201 to 203; or c) the security is registered under the Act. Sections 302 to 306 include provisions relating to securities' registration, notices, statements, suspension, and revocation. Provisions in Section 504 relate to filing sales and advertising literature.)

Section 202a requires the issuer of a security to be an entity that is incorporated or organized under Michigan laws and is authorized to do business in the State. The bill also would require the issuer to be a Michigan resident under SEC Rule 147 (17 C.F.R. 230.147) or SEC Rule 147A (17 C.F.R. 230.147A).

(Under Rule 147, an issuer must be deemed to be a resident of the state or territory in which:

- It is incorporated or organized, and it has its principal place of business, if the issuer is a corporation, limited partnership, trust or other form of business organization that is organized under state or territorial law.
- It has its principal place of business, if the issuer is a general partnership or other form of business organization that is not organized under any state or territorial law.
- The person's principal residence is located, if the issuer is an individual.

The issuer must be deemed to have its principal place of business in a state or territory in which the officers, partners, or managers of the issuer primarily direct, control, and coordinate the activities of the issuer.

Rule 147A states that an issuer must be deemed to be a resident of the state or territory in which it has its principal place of business. The issuer must be deemed to have its principal place of business in a state or territory in which the officers, partners or managers of the issuer primarily direct, control, and coordinate the activities of the issuer.)

Intrastate Offerings. Section 202a requires the transaction to meet the requirements for the Federal exemption for intrastate offerings under Section 3(a)(11) of the Securities Act, and SEC Rule 147, including the requirements for determining whether an offeree or purchaser is a Michigan resident. (Under Section 3(a)(11) of the Securities Act, if the issuer and the purchaser of a security are residents of the same state, certain registration requirements do not apply to the transaction. Rule 147 pertains to intrastate sales, and includes criteria for determining the residency of a party to a transaction.)

Under the bill, the transaction would have to meet the current requirements or the requirements for the Federal exemption for intrastate offerings under 15 U.S.C. 77e and Rule 147A.

(Under 15 U.S.C. 77, unless a registration statement is in effect as to a security, it must be unlawful for any person, directly or indirectly:

- To make use of any means or instrument of transportation or communication in interstate commerce or of the mail to sell such security through the use or medium of any prospectus or otherwise.
- To carry or cause to be carried through the mail or in interstate commerce, by any means or instrument of transportation, any such security for the purpose of sale or for delivery after sale.

Rule 147A specifies that for a period of six months from the date of the sale, any resale of the securities must be made only to people who are residents of the state or territory in which the issuer is a resident at the time of the sale.)

Under Section 202a, the following also apply concerning the requirements for Federal exemption for intrastate offerings:

- The provisions of Rule 147 apply in determining the residency of an offeree or purchaser that is a corporation, partnership, trust, or other form of business organization.
- If the purchaser of a security that is exempt resells that security within nine months after the closing of the particular offering in which the purchaser obtained that security to a person that is not a Michigan resident, the original investment agreement between the issuer and the purchaser is void.

Under the bill, the provisions of Rule 147A, as applicable, also would apply in determining the residency of an offeree or purchaser that is a corporation, partnership, trust, or other form of business organization. Additionally, an investment agreement would be void if the exempt purchaser resold the security within six months, rather than nine months, after the closing.

Disclosure Statement. Section 202a requires an issuer to inform each prospective purchaser that the securities are not registered under Federal or State securities laws and that the securities are subject to limitations on transfer or resale. The issuer must include specific text conspicuously on the disclosure statement. The text includes the following statement:

These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted by subsection (e) of SEC

Rule 147, 17 CFR 230.147(e)... and the applicable state securities laws, pursuant to registration or exemption therefrom.

The bill also would refer to transfer or resale as permitted by subsection (e) of Rule 147A.

Article 4A Amendment

Article 4A provides for the regulation of an intrastate securities market or exchange. The article defines "intrastate offering exemption" as the exemption described in Section 202a or any other exemption from Federal securities regulation under 15 USC 77c(a)(11) and SEC rule 147. The bill also would refer to 15 USC 77e and SEC rule 147A.

MCL 451.2202a & 451.2451

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

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

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.