

HB-4305, As Passed House, October 18, 2017
HB-4305, As Passed Senate, October 18, 2017



HOUSE BILL No. 4305

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March 2, 2017, Introduced by Reps. Kahle, Lucido, Marino, Pagel, Kelly, Brann, Graves, Leutheuser, Ellison, Green and Kosowski and referred to the Committee on Commerce and Trade.

A bill to amend 2008 PA 551, entitled "Uniform securities act (2002)," by amending sections 202a and 451 (MCL 451.2202a and 451.2451), section 202a as added by 2013 PA 264 and section 451 as added by 2014 PA 355.

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, **IS A**
7 **RESIDENT OF THIS STATE UNDER SEC RULE 147, 17 CFR 230.147, OR SEC**
8 **RULE 147A, 17 CFR 230.147A,** and is authorized to do business in
9 this state.

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1 (b) The transaction meets the requirements for the federal
2 exemption for intrastate offerings under ~~section 3(a)(11) of the~~
3 ~~securities act of 1933,~~ 15 USC 77c(a)(11) ~~,~~ and SEC rule 147, 17
4 CFR 230.147, including, but not limited to, the requirements for
5 determining whether an offeree or purchaser is a resident of this
6 state, **OR THE FEDERAL EXEMPTION FOR INTRASTATE OFFERINGS UNDER 15**
7 **USC 77E AND SEC RULE 147A, 17 CFR 230.147A.** All of the following
8 apply concerning these requirements:

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

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

13 (B) A current Michigan voter registration.

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

18 (D) Any other record or documents issued by this state that
19 establishes that the purchaser's principal residence is in this
20 state.

21 (ii) The provisions of SEC rule 147, 17 CFR 230.147, **OR SEC**
22 **RULE 147A, 17 CFR 230.147A, AS APPLICABLE,** apply in determining the
23 residency of an offeree or purchaser that is a corporation,
24 partnership, trust, or other form of business organization.

25 (iii) If a purchaser of a security that is exempt under this
26 section resells that security within ~~9~~-6 months after the closing
27 of the particular offering in which the purchaser obtained that

1 security to a person that is not a resident of this state, the
2 original investment agreement between the issuer and the purchaser
3 is void. If an agreement to purchase, or the purchase of, a
4 security is void under this subparagraph, the issuer may recover
5 damages from the misrepresenting offeree or purchaser. These
6 damages include, but are not limited to, the issuer's expenses in
7 resolving the misrepresentation. However, damages described in this
8 subparagraph shall not exceed the amount of the person's investment
9 in the security.

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

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

25 (ii) Two million dollars, less the aggregate amount received
26 for all sales of securities by the issuer within the 12 months
27 before the first offer or sale made in reliance on this exemption,

1 if the issuer has made available to each prospective purchaser and
2 the administrator audited financial statements or reviewed
3 financial statements for the issuer's most recently completed
4 fiscal year, prepared by a certified public accountant, as defined
5 in section 720 of the occupational code, 1980 PA 299, MCL 339.720,
6 in accordance with the statements on auditing standards of the
7 American institute of certified public accountants or the
8 statements on standards for accounting and review services of the
9 American institute of certified public accountants, as applicable.

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

17 (e) At least 10 days before an offer of securities is made in
18 reliance on this exemption or the use of any publicly available
19 website in connection with an offering of securities in reliance on
20 this exemption, the issuer files a notice with the administrator,
21 in writing or in electronic form as specified by the administrator,
22 that contains all of the following:

23 (i) A notice of claim of exemption from registration,
24 specifying that the issuer intends to conduct an offering in
25 reliance on this exemption, accompanied by the filing fee specified
26 in this section.

27 (ii) A copy of the disclosure statement to be provided to

1 prospective investors in connection with the offering. The
2 disclosure statement must contain all of the following:

3 (A) A description of the issuer, including its type of entity,
4 the address and telephone number of its principal office, its
5 formation history, its business plan, and the intended use of the
6 offering proceeds, including any amounts to be paid, as
7 compensation or otherwise, to any owner, executive officer,
8 director, managing member, or other person occupying a similar
9 status or performing similar functions on behalf of the issuer.

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

12 (C) The identity of the executive officers, directors, and
13 managing members of the issuer, and any other individuals who
14 occupy similar status or perform similar functions in the name of
15 and on behalf of the issuer, including their titles and their prior
16 experience.

17 (D) The terms and conditions of the securities being offered
18 and of any outstanding securities of the issuer, the minimum and
19 maximum amount of securities being offered, if any, and either the
20 percentage ownership of the issuer represented by the offered
21 securities or the valuation of the issuer implied by the price of
22 the offered securities.

23 (E) The identity of any person that the issuer has or intends
24 to retain to assist the issuer in conducting the offering and sale
25 of the securities, including the owner of any websites, if known,
26 but excluding any person acting solely as an accountant or attorney
27 and any employees whose primary job responsibilities involve the

1 operating business of the issuer rather than assisting the issuer
2 in raising capital, and for each person identified in response to
3 this sub-subparagraph, a description of the consideration being
4 paid to that person for that assistance.

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

7 (G) The name and address of any website that the issuer
8 intends to use in connection with the offering, including its
9 uniform resource locator or URL. If the issuer has not engaged a
10 website described in this sub-subparagraph at the time the issuer
11 files the disclosure statement described in this subparagraph with
12 the administrator under this subdivision but subsequently does
13 engage a website for use in connection with the offering, the
14 issuer shall provide the information described in this sub-
15 subparagraph to the administrator by filing a supplemental notice.

16 (iii) An escrow agreement with a bank or other depository
17 institution located in this state, in which the purchaser funds
18 will be deposited, that provides that all offering proceeds will be
19 released to the issuer only when the aggregate capital raised from
20 all purchasers is equal to or greater than the minimum target
21 offering amount specified in the disclosure statement as necessary
22 to implement the business plan and that all purchasers will receive
23 a return of their subscription funds if that target offering amount
24 is not raised by the time stated in the disclosure statement. The
25 bank or other depository institution may contract with the issuer
26 to collect reasonable fees for its escrow services regardless of
27 whether the target offering amount is reached.

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

8 (g) The issuer informs each prospective purchaser that the
9 securities are not registered under federal or state securities
10 laws and that the securities are subject to limitations on transfer
11 or resale and displays the following legend conspicuously on the
12 cover page of the disclosure statement:

13 "IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON
14 THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING,
15 INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT
16 BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR
17 REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE
18 NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS
19 DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.
20 THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND
21 RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY
22 SUBSECTION (E) OF SEC RULE 147, 17 CFR 230.147(E), **OR SUBSECTION**
23 **(E) OF SEC RULE 147A, 17 CFR 230.147A(E)**, AS PROMULGATED UNDER THE
24 SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE
25 SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.
26 PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE
27 FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF

1 TIME.".

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

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

9 This offering has not been reviewed or approved by any state
10 or federal securities commission or other regulatory authority and
11 that no regulatory authority has confirmed the accuracy or
12 determined the adequacy of any disclosure made to me relating to
13 this offering.

14 The securities I am acquiring in this offering are illiquid,
15 that the securities are subject to possible dilution, that there is
16 no ready market for the sale of those securities, that it may be
17 difficult or impossible for me to sell or otherwise dispose of this
18 investment, and that, accordingly, I may be required to hold this
19 investment indefinitely.

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

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

1 If I resell any of the securities I am acquiring in this
2 offering to a person that is not a Michigan resident, within ~~9-6~~
3 months after the closing of the offering, my contract with the
4 issuer for the purchase of these securities is void."

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

8 (i) Before any offer of an investment opportunity to residents
9 of this state through the use of a website, the issuer provides to
10 the website and to the administrator evidence that the issuer is
11 organized under the laws of this state and that it is authorized to
12 do business in this state.

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

16 (iii) The website operator files a written notice with the
17 administrator that includes the website operator's name, business
18 address, and contact information and states that it is authorized
19 to do business in this state and is being utilized to offer and
20 sell securities under this exemption. Beginning 12 months after the
21 date of the written notice, a website operator that has filed a
22 written notice under this subparagraph shall annually notify the
23 administrator in writing of any changes in the information provided
24 to the administrator under this subparagraph.

25 (iv) The issuer and the website keep and maintain records of
26 the offers and sales of securities made through the website and
27 provide ready access to the records to the administrator on

1 request. The administrator may access, inspect, and review any
2 website described in this subdivision and its records.

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

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

9 (l) The issuer does not pay, directly or indirectly, any
10 commission or remuneration to an executive officer, director,
11 managing member, or other individual who has a similar status or
12 performs similar functions in the name of and on behalf of the
13 issuer for offering or selling the securities unless he or she is
14 registered as a broker-dealer, investment adviser, or investment
15 adviser representative under article 4. An executive officer,
16 director, managing member, or other individual who has a similar
17 status or performs similar functions in the name of and on behalf
18 of the issuer is exempt from the registration requirements under
19 article 4 if he or she does not receive, directly or indirectly,
20 any commission or remuneration for offering or selling securities
21 of the issuer that are exempt from registration under this section.

22 (m) The issuer provides a copy of the disclosure statement
23 provided to the administrator under subdivision (e) (ii) to each
24 prospective purchaser at the time the offer of securities is made
25 to the prospective purchaser. In addition to the information
26 described in subdivision (e) (ii), the disclosure statement provided
27 to the administrator and to prospective purchasers shall include

1 additional information material to the offering, including, where
2 appropriate, a discussion of significant factors that make the
3 offering speculative or risky. This discussion must be concise and
4 organized logically and should not present risks that could apply
5 to any issuer or any offering.

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

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

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

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

17 (3) If the offer and sale of a security of an issuer is exempt
18 under this section, the issuer shall provide a quarterly report to
19 the issuer's purchasers until none of the securities issued under
20 this section are outstanding. All of the following apply to the
21 quarterly report described in this subsection:

22 (a) The issuer shall provide the report free of charge to the
23 purchasers.

24 (b) An issuer may satisfy the report requirement under this
25 subsection by making the information available on an internet
26 website if the information is made available within 45 days after
27 the end of each fiscal quarter and remains available until the next

1 quarterly report is issued.

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

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

6 (i) The compensation received by each director and executive
7 officer of the issuer, including cash compensation earned since the
8 previous report and on an annual basis and any bonuses, stock
9 options, other rights to receive securities of the issuer or any
10 affiliate of the issuer, or other compensation received.

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

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

17 (5) The exemption described in this section does not apply if
18 an issuer or person that is affiliated with the issuer or offering
19 is subject to any disqualification established by the administrator
20 by rule or contained in rule 262 as promulgated under the
21 securities act of 1933, 17 CFR 230.262. However, this subsection
22 does not apply if both of the following are met:

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

27 (b) The issuer establishes that it made factual inquiry into

1 whether any disqualification existed under this subsection but did
2 not know, and in the exercise of reasonable care could not have
3 known, that a disqualification existed under this subsection. The
4 nature and scope of the requisite inquiry will vary based on the
5 circumstances of the issuer and the other offering participants.

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

9 (7) The administrator shall charge a nonrefundable filing fee
10 of \$100.00 for filing an exemption notice required under subsection
11 (1). The fees paid to the administrator under this subsection shall
12 be used to pay the costs incurred in administering and enforcing
13 this act.

14 (8) A website through which an offer or sale of securities
15 under this section is made is not subject to the broker-dealer,
16 investment adviser, or investment adviser representative
17 registration requirements under article 4 if the website meets all
18 of the following conditions:

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

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

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

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

27 (e) It does not engage in any other activities that the

1 administrator by rule determines are inappropriate for an exemption
2 from the registration requirements under article 4.

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

6 (10) As used in this section, "controlling person" means an
7 officer, director, partner, or trustee, or another individual who
8 has similar status or performs similar functions, of or for the
9 issuer or to a person that owns 10% or more of the outstanding
10 shares of any class or classes of securities of the issuer.

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

13 Sec. 451. As used in this article:

14 (a) "Intrastate offering exemption" means the exemption
15 described in section 202a or any other exemption from federal
16 securities regulation under ~~section 3(a)(11) of the securities act~~
17 ~~of 1933,~~ 15 USC 77c(a)(11) ~~,~~ and SEC rule 147, 17 CFR 230.147, **15**
18 **USC 77E AND SEC RULE 147A, 17 CFR 230.147A.**

19 (b) "Michigan investment market" means a person that is a
20 broker-dealer, is exempt from federal registration under section
21 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and
22 provides a market or exchange at which transactions in securities
23 that are sold or offered for sale in this state under an intrastate
24 offering exemption take place. As used in this subdivision, "market
25 or exchange" includes an online market or exchange or any other
26 market or exchange operated through a web portal.

27 (c) "Online" means functioning on or over the internet.

1 (d) "Personal identifying information" means any information
2 used to locate or accurately categorize an individual, household,
3 or business.

4 (e) "Resident of this state" means 1 of the following, as
5 applicable:

6 (i) If a person is an individual, his or her principal
7 residence is located in this state.

8 (ii) If a person is a business that is a general partnership
9 or other form of organization that is not incorporated or organized
10 under the laws of this state, that person's principal office is
11 located in this state.

12 (iii) If the person is a business that is a corporation,
13 limited liability company, limited partnership, trust, or other
14 form of legal entity that is incorporated or organized under state
15 law, that person is incorporated or organized under the laws of
16 this state.

17 (f) "Service" means to include securities issued by a person
18 in or on a market or exchange for sale or to assist in facilitating
19 securities transactions in or on a market or exchange.

20 (g) "Web portal" means an online entity through which persons
21 are able to effect transactions in securities.