

# HOUSE BILL No. 4305

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.

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.