

UNIFORM SECURITIES ACT (EXCERPT)
Act 265 of 1964

PART III
REGISTRATION OF SECURITIES

***** 451.701 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.701 Sale of securities; registration requirement.

Sec. 301. It is unlawful for any person to offer or sell any security in this state unless 1 of the following is met:

- (1) It is registered under this act.
- (2) The security or transaction is exempted under section 402.
- (3) The security is a federally covered security.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

***** 451.702 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.702 Securities; registration by notification; statement; contents; additional documents; information; effectiveness; copy to be sent to offeree.

Sec. 302. (a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 303:

(1) Any security whose issuer and any predecessors have been in continuous operation for at least 5 years if (A) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest or dividends on any security of the issuer, or any predecessor, with a fixed maturity or a fixed interest or dividend provision, and (B) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least 5% of the amount of such outstanding securities, as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price, or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for 3 full fiscal years, equal at least 5% of the amount, as measured in clause (i), of all securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued.

(2) Any security, other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if (A) any security of the same class has ever been registered under this act or a predecessor act, or (B) the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305 (c) and the consent to service of process required by section 414 (g):

- (1) A statement demonstrating eligibility for registration by notification;
- (2) With respect to the issuer and any significant subsidiary: its name, address and form of organization; the state, or foreign jurisdiction, and the date of its organization; and the general character and location of its business;
- (3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;
- (4) A description of the security being registered;
- (5) The information and documents specified in clauses (8), (10), (11) and (12) of section 304 (b); and
- (6) In the case of any registration under section 302 (a) (2) which does not also satisfy the conditions of section 302 (a) (1), a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the

balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than 2 years.

(c) If no stop order is in effect and no proceeding is pending under section 306, a registration statement under this section automatically becomes effective at 3 p.m., eastern standard time, on the twentieth full day after the filing of the registration statement or the last amendment, or at such earlier time as the administrator determines.

(d) The administrator may by rule or order require as a condition of registration under this section that a copy of the registration statement filed under subsection (b) be given or sent to each person to whom an offer is made before or concurrently with such offer.

History: 1964, Act 265, Eff. Jan. 1, 1965.

***** 451.703 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.703 Registration by coordination.

Sec. 303. (a) Any security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305(c) and the consent to service of process required by section 414(g):

(1) Three copies of the latest form of prospectus filed under the securities act of 1933;

(2) If the administrator by rule or otherwise requires, a copy of the articles of incorporation and bylaws, or their substantial equivalents, currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the administrator requests, any other information, or copies of any other documents, filed under the securities act of 1933; and

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly, and in any event not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under section 306.

(2) The registration statement has been on file with the administrator for at least 20 days and all subsequent amendments except pricing amendments have been on file for at least 10 days.

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 full business days or such shorter period as the administrator permits by rule or otherwise and the offering is made within those limitations.

(d) The registrant shall promptly notify the administrator by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the administrator may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if it promptly notifies the registrant by telephone or telegram, and promptly confirms by letter or telegram when it notifies by telephone, of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order is void as of the time of its entry. The administrator may by rule or otherwise waive either or both of the conditions specified in subsection (c)(2) and (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether it then contemplates the institution of a proceeding under section 306; but this advice by the administrator does not preclude the

institution of such a proceeding at any time.

(e) The registrant may waive automatic effectiveness by written notice to the administrator. The waiver may be withdrawn by filing a written notice of withdrawal 5 business days before the effective date of the withdrawal.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979.

***** 451.704 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.704 Securities; registration by qualification; statement; contents; additional documents; information; effectiveness; prospectus to be sent to offeree; report; deposit.

Sec. 304. (a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305 (c) and the consent to service of process required by section 414 (g):

(1) With respect to the issuer and any significant subsidiary: its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address and principal occupation for the past 5 years; the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected.

(3) With respect to persons covered by clause (2): the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries and affiliates, to all those persons in the aggregate.

(4) With respect to any person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) other than his occupation.

(5) With respect to every promoter if the issuer was organized within the past 3 years: the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment.

(6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected; and a statement of his reasons for making the offering.

(7) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill or anything else, for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities.

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which

the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in clause (2), (4), (5), (6) or (8) and by any person who holds or will hold 10% or more in the aggregate of any such options.

(11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past 2 years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities.

(12) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering.

(13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer.

(15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement.

(16) A balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

(17) Such additional information as the administrator requires by rule or order.

(c) A registration statement under this section becomes effective when the administrator so orders.

(d) The administrator may by rule or order require as a condition of registration under this section that a prospectus be sent or given to each person to whom an offer is made. The administrator may by rule or order fix the requirements as to the use, content, revision and supplementation of the prospectus.

(e) The administrator may by rule or order require as a condition of registration under this section that a report by an accountant, engineer, appraiser or other professional person be filed and may require that the estimated cost of such report be deposited in advance by the applicant in an escrow account. The administrator may also designate an employee to make an investigation of the books, records and affairs of any applicant for registration by qualification and may require the estimated cost thereof to be deposited in advance by the applicant in an escrow account.

History: 1964, Act 265, Eff. Jan. 1, 1965.

***** 451.704a THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.704a Small company offering registration.

Sec. 304a. (1) A security that is exempt from registration under the federal exemption set forth in 17 C.F.R. 230.504 may be registered under this section. An issuer eligible to register a security under this section shall use a registration form approved by the administrator as the disclosure document for the offering. A registration under this section shall be known as a small company offering registration.

(2) An application for a small company offering registration shall comply with this section. The offering is exempt pursuant to 17 C.F.R. 230.504, 17 C.F.R. 230.251, or section 3(a)(11) of the securities act of 1933.

However, the administrator may waive provisions of this section.

(3) A small company offering registration under this section is not available to either of the following:

(a) Investment companies subject to the investment company act of 1940.

(b) Issuers subject to the reporting requirements of section 13 or section 15(d) of title I of the securities exchange act of 1934, 15 U.S.C. 78m and 78o.

(4) All of the following provisions apply to the availability of a small company offering registration:

(a) A small company offering registration shall not be utilized by the following issuers and programs unless the administrator grants written permission based upon a showing that adequate disclosure can be made to investors using the small company offering registration format:

(i) Holding companies, or companies that have a principal purpose of owning stock in, or supervising the management of, other companies.

(ii) Portfolio companies, such as real estate investment trusts.

(iii) Issuers with complex capital structures.

(iv) Commodity pools.

(v) Equipment leasing programs.

(vi) Real estate programs.

(b) A small company offering registration under this section is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. In addition, each of the following requirements shall be met:

(i) The issuer is a domestic corporation, a foreign corporation, or a manager managed limited liability company organized under the laws of any state, territory, or possession of the United States or province or territory of Canada. The administrator may allow other entities to file a small company offering registration.

(ii) The offering is not a blind pool or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.

(iii) The offering price for securities; the exercise price if the securities offered are options, warrants, or rights for common stock or membership interests; or the conversion price if the securities are convertible into common stock or units of membership interest is at least \$1.00 per share or unit of membership interest. The issuer shall enter into an agreement with the administrator that the issuer will not split any class of security or declare a dividend for 2 years after the effective date of the registration if such action has the effect of lowering the price below \$1.00 per share.

(iv) The aggregate offering price of the securities offered, within or outside this state, is not more than \$1,000,000.00, or a greater amount established under 17 C.F.R. 230.504, or \$5,000,000.00 if a federal exemption is granted to this state pursuant to section 3(b) of the securities act of 1933, 15 U.S.C. 77c, or an amount authorized under 17 C.F.R. 230.251, if the issuer is utilizing a registration form approved by the administrator.

(c) A small company offering registration under this section is only available for debt offerings if the issuer can demonstrate a reasonable ability to service its debt.

(5) Except as otherwise provided in this subsection, financial statements shall be prepared in accordance with generally accepted accounting principles or the Canadian equivalent. If the issuer has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. Annual financial statements shall be audited by independent certified public accountants or chartered accountants, as appropriate, except that annual financial statements in lieu of being audited may be reviewed by independent certified public accountants or chartered accountants, in accordance with the accounting and review services standards promulgated by the American institute of certified public accountants or the Canadian equivalent, consistently applied, rather than audited, if all of the following conditions are satisfied:

(a) The issuer has not previously sold securities through an offering involving general advertising or the solicitation of prospective investors.

(b) The issuer has not been previously required under federal, state, provincial, or territorial securities laws to provide audited financial statements in connection with any sale of its securities.

(c) The aggregate amount of all previous sales of securities by the issuer within the last 24 months does not exceed \$1,000,000.00.

(d) The amount of the small company offering for which a small company registration is sought does not exceed \$1,000,000.00.

(6) A small company offering registration under this section is not available if any of the following provisions apply to the issuer, to any of the issuer's officers, directors, managers, 10% security holders, promoters, or selling agent of the securities to be offered, or to any officer, director, or partner of the selling agent of the securities to be offered:

(a) The person has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within 5 years before the small company offering registration application is filed.

(b) The person has been convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including any of the following, within 5 years before the small company offering registration application is filed:

- (i) Forgery.
- (ii) Embezzlement.
- (iii) Obtaining money under false pretenses.
- (iv) Larceny.
- (v) Conspiracy to defraud.

(c) The person is currently subject to either of the following:

(i) A state administrative enforcement order or judgment entered against that person by a state securities administrator or the securities and exchange commission within 5 years before the small company offering registration application is filed.

(ii) A federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or failing to state material facts, was found and the order or judgment was entered within 5 years before the small company offering registration application is filed.

(d) The person is subject to a federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption for registration in connection with the offer, purchase, or sale of securities.

(e) The person is currently subject to a court order, judgment, or decree entered within 5 years before the small company offering registration application is filed that does either of the following:

(i) Temporarily, preliminarily, or permanently restrains or enjoins that person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

(ii) Involves the making of a false filing with any state or with the securities and exchange commission.

(f) A person who is disqualified under this subsection shall not act in any capacity other than that for which the person is licensed or registered. A disqualification under this subsection is automatically waived if the administrator or other state or federal agency that created the basis for disqualification determines, upon a showing of good cause, that it is not necessary under the circumstances to deny the exemption.

(g) Subdivisions (a), (b), (c), and (e) do not apply if the person disqualified under those subdivisions is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against that person or if the broker-dealer who employs the person is licensed or registered in this state and the form BD filed in this state discloses the order, conviction, judgment, or decree relating to that person.

(7) An applicant who files a small company offering registration application in this state shall not split its securities or declare a stock or membership dividend for any security issued under this section for 2 years after the registration is effective without the prior written approval of the administrator.

(8) In addition to a properly completed application form, an applicant for a small company offering registration under this section shall file all of the following exhibits with the administrator:

- (a) The form of the selling agency agreement.
- (b) The issuer's articles of incorporation or other charter documents and all amendments.
- (c) The issuer's bylaws or operating agreement, as amended.
- (d) Copies of any resolutions by directors or managers setting forth terms and provisions of securities to be issued.

(e) Any indenture, form of note, or other contractual provision containing terms of notes or other debt or of options, warrants, or rights to be offered.

(f) A specimen of the security to be offered, including any legend restricting resale.

(g) Consent to service of process accompanied by an appropriate resolution.

(h) Copies of all material directed or furnished to investors in the offering.

(i) The form of escrow agreement for escrow of proceeds. An escrow agreement shall comply with all of the following:

(i) The administrator may require that the issuer impound the proceeds from the sale of a registered security in this state until the issuer receives a specified amount from the sale of that security in this state or elsewhere that is sufficient to accomplish the stated purposes of the offering or until the issuer's stipulated requirements are met.

(ii) The administrator may require that the issuer return any impounded proceeds, together with any accrued interest, to investors if the issuer fails to raise the specified amount while the registration is effective

or within 1 year or if the issuer's stipulated requirements are not met.

(iii) A bank or trust company may act as the depositary or escrow agent for impounded proceeds. Checks, drafts, and money orders shall be made payable to the depositary. If a broker-dealer is acting as selling agent for the issuer, the broker-dealer shall promptly remit payments made directly to the broker-dealer to the depositary or escrow agent.

(iv) A request to release impounded funds shall be in writing. The request shall confirm compliance with the registration and shall be accompanied by a statement from the depositary or escrow agent setting forth the total amount on deposit.

(j) Consent to inclusion in the disclosure document of an accountant's report.

(k) Consent to inclusion in the disclosure document of a tax advisor's opinion or a description of tax consequences.

(l) Consent to inclusion in the disclosure document of an evaluation by a licensed attorney of any pending or anticipated litigation or administrative action.

(m) The form of any subscription agreement for the purchase of securities in the offering.

(n) An opinion of a licensed attorney that the securities to be sold in the offering are duly authorized and binding on the issuer in accordance with the terms of the securities.

(o) A list of the residence street addresses of officers, directors, managers, and principal security holders.

(9) Information provided to the administrator under subsection (8) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) An applicant for a small company offering registration under this section shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but in no case less than \$100.00 or more than \$1,250.00, to the administrator with the application form. If the applicant withdraws the application before the small company offering registration is effective or before a preeffective stop order is issued, the administrator shall retain the entire filing fee if review of the application has commenced, or shall retain a \$100.00 fee and refund the balance of the filing fee to the applicant if review of the application has not commenced.

(11) A small company offering registration statement filed under this section is effective for 1 year from its effective date, except during the time a stop order is in effect under this section. A small company offering registration statement may be extended by the administrator by rule or order. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction so long as the small company offering registration statement is effective. A small company offering registration statement may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. A small company offering registration statement may be withdrawn otherwise only in the discretion of the administrator.

(12) For the period that a small company offering registration statement is effective, the administrator may by rule or order require the person who filed the small company offering registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the small company offering registration statement and to disclose the progress of the offering.

(13) A small company offering registration statement relating to a security may be amended after its effective date to increase the securities specified as proposed to be offered. As to securities not yet sold, an amendment becomes effective upon the administrator's order. In the case of securities that are sold in an amount in excess of the amount or number of securities specified in an effective small company offering registration statement as proposed to be offered, the person or persons who filed the small company offering registration statement may, in accordance with rules the administrator shall promulgate as necessary or appropriate in the public interest and for the protection of investors, elect to have the small company offering registration of those securities considered effective as of the time of their sale, upon payment to the administrator within 6 months after the sale of a registration fee equal to the difference between the registration fee previously paid and the amount of the fee that would have otherwise been applicable to those additional securities if they had been included in the small company offering registration statement, if any, plus a late registration fee of \$250.00. Upon the election and payment, the small company offering registration statement shall be considered to have been in effect with respect to those securities. Every person filing an amendment under this section shall pay a filing fee, calculated in the manner specified in subsection (10), with respect to the additional securities.

(14) Fees, expense reimbursements, and fines received under this section shall be deposited in the state treasury to the credit of the administrator, to be used pursuant to legislative appropriation by the administrator in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of this state.

(15) Fees and fines received under this section shall not be expended for partisan political activity.

(16) All of the following apply to orders under this subsection:

(a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any small company offering registration statement if it finds that the order is in the public interest and any of the following:

(i) The small company offering registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under subsection (13) as of its effective date, or any report under subsection (12) is incomplete in any material respect or contains any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.

(ii) Any provision of this section or any rule, order, or condition lawfully imposed under this section has been violated in connection with the offering by any of the following:

(A) The person filing the small company offering registration statement.

(B) The issuer, any officer, director, or manager of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the small company offering registration statement is directly or indirectly controlled by or acting for the issuer.

(C) Any underwriter.

(iii) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court entered under any other federal or state act applicable to the offering. However, the administrator shall not institute a proceeding against an effective small company offering registration statement under this subdivision more than 1 year from the date of the order or injunction relied on, and may not enter an order under this subdivision on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts that would currently constitute a ground for a stop order under this section.

(iv) The issuer's enterprise or method of business includes or would include activities that are illegal where performed.

(v) The offering has worked or has tended to work a fraud, deception, or imposition or would operate to work a fraud, deception, or imposition.

(b) The administrator may by order summarily postpone or suspend the effectiveness of the small company offering registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify each person specified in subdivision (c) that the order has been entered, the reasons that the order has been entered, and that within 15 days after the receipt of a written request the matter will be scheduled for hearing. If no hearing is requested and none is ordered by the administrator, the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing to each person specified in subdivision (c), may modify, vacate, or extend the order until final determination.

(c) A stop order shall not be entered under this section except under the first sentence of subdivision (b) without all of the following:

(i) Appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

(ii) Opportunity for hearing.

(iii) Written findings of fact and conclusions of law.

(d) The administrator may vacate or modify a stop order if it finds that the conditions that prompted entry of the stop order have changed or that it is otherwise in the public interest to vacate or modify the stop order.

History: Add. 1996, Act 529, Imd. Eff. Jan. 13, 1997;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

***** 451.705 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.705 Registration statement; filing; fee; contents; conditions; effective period; withdrawal; reports, information, and progress of offering; amendment; election; registration fee; filing fee; disposition of fees, expense reimbursements, and fines; prohibition; applicability of section to securities registered under MCL 451.704a.

Sec. 305. (a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) Every person filing a registration statement shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than \$100.00 or more than \$1,250.00. When an application for registration is withdrawn before

the effective date or a preeffective stop order is issued, the administrator shall retain a fee of \$100.00 if the initial review has not been commenced, and the full filing fee after review has been commenced.

(c) Every registration statement shall specify all of the following:

(1) The amount of securities to be offered in this state.

(2) The states in which a registration statement or similar document in connection with the offering has been or is to be filed.

(3) Any withdrawal or any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

(d) Any document filed under this act or a predecessor act within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) The administrator may by rule or order require as a condition of registration by qualification or coordination both of the following:

(1) That any security issued or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow.

(2) That the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The administrator may by rule or order determine the conditions of any escrow or impounding required under this subsection, and, after prior notice and opportunity for hearing, may order the cancellation in whole or in part of any security deposited in escrow if necessary for the protection of security holders. The administrator may not reject a depository solely because of location in another state.

(g) The administrator may by rule or order impose conditions under which a security registered by qualification may be sold, if it finds that the conditions are reasonable and in the public interest.

(h) Every registration statement is effective for 1 year from its effective date, except during the time a stop order is in effect under section 306. A registration statement may be extended by the administrator by rule or order. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction so long as the registration statement is effective or the issuer has a class of securities that have been subject to the reporting requirements of section 13 or 15(d) of title I of the securities exchange act of 1934, 15 U.S.C. 78m and 78o, for not less than 9 months before the transaction and all reports required by that act have been filed for that period. A registration statement may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the administrator.

(i) For the period that the registration statement is effective, the administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(j) A registration statement relating to a security may be amended after its effective date to increase the securities specified as proposed to be offered. As to securities not yet sold, an amendment becomes effective upon the administrator's order. In the case of securities that are sold in an amount in excess of the amount or number of securities specified in an effective registration statement, as proposed to be offered, the person or persons who filed the registration statement may, in accordance with rules the administrator shall promulgate as necessary or appropriate in the public interest and for the protection of investors, elect to have the registration of those securities considered effective as of the time of their sale, upon payment to the administrator within 6 months after the sale of a registration fee equal to the difference between the registration fee previously paid and the amount of the fee that would have otherwise been applicable to those additional securities if they had been included in the registration statement, if any, plus a late registration fee of \$250.00. Upon the election and payment, the registration statement shall be considered to have been in effect with respect to those shares. Every person filing an amendment under this subsection shall pay a filing fee, calculated in the manner specified in subsection (b), with respect to the additional securities.

(k) Fees, expense reimbursements, and fines received under this act shall be deposited in the state treasury to the credit of the administrator, to be used pursuant to legislative appropriation by the administrator in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of this state.

(l) Fees and fines received under this act shall not be expended for partisan political activity.

(m) This section does not apply to securities registered under section 304a.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 1996, Act 529, Imd. Eff. Jan. 13, 1997;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 et seq. of the Michigan Administrative Code.

***** 451.706 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.706 Registration statement; denial, suspension or revocation by administrator's stop order; findings; postponement or suspension; notice; hearing; requirements for entry of stop order; vacating or modifying stop order; applicability of section to securities registered under MCL 451.704a.

Sec. 306. (a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if it finds that the order is in the public interest and any of the following:

(1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 305(j) as of its effective date, or any report under section 305(i) is incomplete in any material respect or contains any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.

(2) Any provision of this act or any rule, order, or condition lawfully imposed under this act has been violated in connection with the offering by any of the following:

(i) The person filing the registration statement.

(ii) The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer.

(iii) Any underwriter.

(3) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court entered under any other federal or state act applicable to the offering. However, the administrator may not institute a proceeding against an effective registration statement under this clause more than 1 year from the date of the order or injunction relied on, and may not enter an order under this clause on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts that would currently constitute a ground for a stop order under this section.

(4) The issuer's enterprise or method of business includes or would include activities that are illegal where performed.

(5) The offering has worked or has tended to work a fraud, deception, or imposition or would operate to work a fraud, deception, or imposition, or the offering is on unfair terms.

(6) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options. With respect to the sale of periodic payment plan certificates for the purchase of securities of investment companies registered under the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-64, commissions up to 9% of the total payments to be made during the entire term of the plan, and deductions for those commissions from any of the first 12 monthly payments, or their equivalent, up to 1/2 thereof, shall be allowed.

(7) If a security is sought to be registered by notification, it is not eligible for that registration.

(8) If a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 303(b)(4).

(9) The applicant or registrant has failed to pay the proper filing fee. However, the administrator may enter only a denial order under this clause and it shall vacate that order if the deficiency is corrected.

(b) The administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify each person specified in subsection (c) that the order has been entered, the reasons that the order has been entered, and that within 15 days after the receipt of a written request the matter will be scheduled for hearing. If no hearing is requested and none is ordered by the administrator, the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing to each person specified in subsection (c), may modify, vacate, or extend the order until final determination.

(c) No stop order may be entered under this section except under the first sentence of subsection (b),

without all of the following:

- (1) Appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.
- (2) Opportunity for hearing.
- (3) Written findings of fact and conclusions of law.
- (d) The administrator may vacate or modify a stop order if it finds that the conditions that prompted entry of the stop order have changed or that it is otherwise in the public interest to vacate or modify the stop order.
- (e) This section does not apply to securities registered under section 304a.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1996, Act 529, Imd. Eff. Jan. 13, 1997.

***** 451.707 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.707 Preliminary prospectus.

Sec. 307. An applicant for registration or exemption may deliver a preliminary prospectus to offerees before the effectiveness of a registration or exemption order if either of the following conditions is satisfied:

- (a) If the applicant has filed a registration statement under section 302 or 303 and a stop order is not in effect under this act or the securities act of 1933, title I of chapter 38, 48 Stat. 74, 15 U.S.C. 77a to 77r and 77s to 77aa, or a public proceeding or examination looking toward a stop order is not pending under this act or the securities act of 1933.
- (b) If the applicant has filed a registration statement under section 304 or 304a or has filed a request for an exemption order under section 402 more than 5 business days before delivery of a preliminary prospectus, and the administrator by written notice to the applicant has not objected to the use of the preliminary prospectus, or a stop order, proceeding, or examination is not in effect or pending.

History: Add. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1996, Act 529, Imd. Eff. Jan. 13, 1997.

***** 451.708 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.708 Registered security or filed registration statement; notice filing; projection of nonexempt sales; reports; penalty.

Sec. 308. (a) Any security issued by an investment company, other than a unit investment trust, that is registered or that has filed a registration statement under the investment company act of 1940 may be offered for sale and sold into, from, or within this state upon the annual receipt by the administrator of all of the following:

- (1) A notice as prescribed by the administrator. A copy of the federal registration statement filed with the securities and exchange commission under the securities act of 1933 may be provided to the administrator in lieu of the notice.

- (2) Payment of a fee of \$500.00.

- (3) A consent to service of process.

(b) Any security issued by a unit investment trust that is registered or that has filed a registration statement under the investment company act of 1940 as an investment company may be offered for sale and sold into, from, or within this state for an indefinite period commencing upon the later of the trust's effectiveness with the securities and exchange commission or the administrator's receipt of a notice as prescribed by the administrator and a 1-time notice filing fee of \$500.00.

(c) Each of the following applies to a notice filing under subsection (a):

- (1) A notice filing is effective for a period of 1 year, commencing upon the later of the effectiveness of the offering with the securities and exchange commission or the administrator's receipt of the notice filing.

- (2) A notice filing may be renewed for an additional 1-year period by filing a current form NF and the fee required by subsection (h) before the expiration of the 1-year effective period. The renewal is effective upon the expiration of the prior notice period.

- (3) A notice filing may be terminated by filing with the administrator a notice of termination as prescribed by the administrator. The termination is effective upon the administrator's receipt of the notice of termination.

(d) With respect to any security that is a federally covered security under the securities act of 1933, the issuer shall file a notice on securities and exchange commission form D or a form approved by the administrator; with a consent to service of process signed by the issuer, no later than 15 days after the first sale of a federally covered security in this state, together with a nonrefundable filing fee of \$100.00.

(e) The administrator, by rule or order, may require the filing of any document filed with the securities and

exchange commission under the securities act of 1933, with respect to a federally covered security under the securities act of 1933, together with a nonrefundable filing fee of \$100.00.

(f) The administrator may issue a stop order suspending the offer and sale of a federally covered security, except a federally covered security under section 18(b)(1) of the securities act of 1933, 15 U.S.C. 77r, if it finds that the order is in the public interest and there is a failure to comply with this section.

(g) The administrator, by rule or order, may waive any or all of the provisions of this section.

(h) All of the following apply to the renewals of a notice filing under subsection (c):

(1) Subject to adjustment under subdivision (3), the fee for the renewal shall be 1 of the following:

(A) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of \$250,000.00 or less, \$100.00.

(B) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$250,000.00 but not more than \$700,000.00, \$400.00.

(C) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$700,000.00 but not more than \$1,000,000.00, \$800.00.

(D) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$1,000,000.00, \$1,400.00.

(2) For purposes of subdivision (1), an issuer's projection of nonexempt sales of a security must be reasonable and based on any facts known to the issuer at the time of renewal that may affect sales of the security, including, but not limited to, nonexempt sales of the security in this state during the current 1-year notice filing period.

(3) If an issuer's nonexempt sales of a security in this state during a 1-year notice filing period exceed the projections for that period that the issuer had submitted to the administrator for determination of the issuer's renewal fee for that 1-year notice filing period, the issuer is not required to amend its projections or pay an additional fee for that notice filing period. However, the fee for renewal of the notice filing shall be the greater of the following:

(A) The renewal fee determined under subdivision (1).

(B) A renewal fee determined under subdivision (1), using actual sales during the current notice filing period as the projected sales for the renewal notice filing period.

(4) If an issuer's nonexempt sales of a security in this state during a 1-year notice filing period are less than the projections for that period that the issuer had submitted to the administrator for determination of the issuer's renewal fee for the 1-year notice filing period, the issuer is not entitled to a refund of any part of the renewal fee for that period or adjustment of the renewal fee for any renewal period.

(5) Upon written request of the administrator, an issuer shall provide sales reports showing the issuer's nonexempt sales of a security in this state for the current and 2 previous 1-year notice filing periods, but the issuer is not otherwise required to provide a sales report to the administrator in connection with a renewal of a notice filing.

(6) If the administrator determines that for 2 consecutive 1-year notice filing periods an issuer's nonexempt sales of a security in this state exceeded the issuer's sales projections for that period, the administrator may assess the issuer a penalty in the amount of the renewal fees the issuer would have paid under subdivision (1) if its projections had been accurate. This penalty is in addition to an increased fee for renewal under subdivision (3), if any.

History: Add. 2000, Act 494, Imd. Eff. Jan. 11, 2001.