

# Legislative Analysis



## UNIFORM SECURITIES ACT (2002)

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### House Bills 5746-5761

Sponsor: Rep. James Koetje

Committee: Commerce

Complete to 6-1-04

## A SUMMARY OF HOUSE BILLS 5746-5761 AS INTRODUCED 4-1-04

House Bill 5746 would create the Uniform Securities Act (2002). It would repeal the existing Uniform Securities Act, Public Act 265 of 1964. The new act would take effect 180 days after enactment. House Bills 5747-5761 would each amend a separate act to update references to make them apply to the new Uniform Securities Act. The administrator of the act would be the Office of Financial and Insurance Services (OFIS) within the Department of Labor and Economic Growth.

The new act is based on a uniform act developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). According to the NCCUSL, the model act is designed to coordinate federal and state securities legislation. By “securities”, the act means notes; stocks; treasury stocks; security futures; bonds; debentures; evidences of indebtedness; certificates of interest or participation in profit sharing agreements; collateral trust agreements; interests in oil, gas, or mineral rights; puts, calls, straddles, and options on securities, certificates of deposits, or groups and indexes of securities; investments in viatical or life settlement agreements; and similar instruments.

The model act is divided into seven articles as follows.

Article 1 (General Provisions) deals with definitions and references to federal statutes and federal agencies, and provides the act’s short title. Article 2 (Exemptions from Registration of Securities) provides for exempt securities and exempt transactions and the denial, suspension, revocation, condition, and limitation of exemptions. Article 3 (Registration of Securities) addresses notice filings; securities registration by coordination; securities registration by qualification; and securities registration filings; as well as the denial, suspension, and revocation of securities registration.

Article 4 (Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers) addresses registration requirements and exemptions for each classification of professional; succession and change in registration; filing fees; post-registration requirements; and denials, revocations, suspensions, withdrawals, restrictions, conditions, and limitations related to registration. Article 5 (Fraud and Liabilities) deals with prohibited conduct in providing

investment advice; evidentiary burden; the filing of sales and advertising literature; misleading filings; and misrepresentations concerning registration or exemption, immunities, criminal penalties, civil liability, and rescission offers.

Article 6 (Administration and Judicial Review) addresses matters related to administration; investigation and subpoenas; civil and administrative enforcement; rules, orders, interpretative opinions, and orders; public records and confidentiality; uniformity and cooperation with other agencies; judicial review; jurisdiction; and service of process. Article 7 (Transition) deals with the repeal of existing legislation and the effective date of the new act, as well as the application of the new act to existing proceedings and existing rights and duties.

According to information from the NCCUSL, the new act “will give states regulatory and enforcement authority that avoids duplication of regulatory effort and blends with federal regulation and enforcement in a more efficient system for investor protection.” The NCCUSL lists the following as key components of the model act: 1) the registration of securities by means of three methods (notice, coordination, and qualification) to clarify and simplify the process for both regulators and industry; 2) the regulation of broker-dealers, investment advisors, and their agents and representatives through registration in the states where they do business; 3) expanded enforcement powers, including civil and criminal actions against perpetrators of fraud, including court and administrative action; 4) investigatory and subpoena powers for state securities administrators; 5) criminal penalties, which are set by the state; 6) investor education, through the creation of an optional fund to support investor education programs; and 7) electronic filing facilitation.

The criminal provisions in House Bill 5746 would make a willful violation of the act or a rule adopted or an order issued under the act a felony punishable by imprisonment for up to 10 years and/or a fine of up to \$500,000 for each violation. An individual convicted of violating a rule or order could be fined but not imprisoned if he or she did not have knowledge of the rule or order. The attorney general or the proper prosecuting attorney could institute appropriate criminal proceedings with or without a reference from the state administrator. The act would not limit the power of the state to punish a person for conduct that constituted a crime under other state laws.

The bill would also create the Securities Investigation, Enforcement, and Education Fund as a revolving fund in the state treasury. All fees and civil fines received by OFIS under the act would be deposited in the fund. Upon appropriation, money in the fund could be used for OFIS investigations involving securities; enforcement actions; and educational programs for the public. These programs would be investor education initiatives to inform the public about investing in securities with particular emphasis on the prevention and detection of securities fraud.

House Bill 5747 would amend the Michigan Education Trust Act (MCL 390.1439), which exempts advance tuition payment contracts from the Uniform Securities Act.

House Bill 5748 would amend the Michigan Penal Code (MCL 750.159g and 411j) to include certain violations of the securities law in the definition of “racketeering”.

House Bill 5749 would amend the Revised Judicature Act of 1961 (600.4701) to amend the definition of “crime” to update the securities act reference.

House Bill 5750 would amend the Savings and Loan Act of 1980 (MCL 491.515) to update the definition of “securities”.

House Bill 5751 would amend the Nonprofit Corporation Act (MCL 450.3137) to address cooperative nonvoting investment certificates and bonds.

House Bill 5752 would amend the Professional Service Corporation Act (MCL 450.228).

House Bill 5753 would amend the Michigan Export Development Act (MCL 447.160).

House Bill 5754 would amend the Credit Services Protection Act (MCL 445.1822).

House Bill 5755 would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1651a and 1679).

House Bill 5756 would amend the Michigan Consumer Protection Act (MCL 445.920).

House Bill 5757 would amend Public Act 227 of 1971 (MCL 445.111), which deals with home solicitation sales.

House Bill 5758 would amend the Natural Resources and Environmental Protection Act (MCL 324.21528 and 50510), which exempts certain bonds and notes from having to be filed under the state securities law.

House Bill 5759 would amend the Michigan Strategic Fund Act (MCL 125.2023), which exempts the fund’s bonds and notes from filing requirements in the state securities law.

House Bill 5760 would amend the Public Employee Retirement System Investment Act (MCL 38.1133), under which investment fiduciaries have to be registered under state securities law.

House Bill 5761 would amend the Code of Criminal Procedure (MCL 777.14j) to put the new felony created by the Uniform Securities Act (2002) in the sentencing guidelines as a Class E felony violating the public trust and carrying a 10-year maximum imprisonment penalty. Current felonies (also carrying 10-year maximum prison terms) under the existing securities law would be deleted.

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