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SFA



BILL ANALYSIS

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House Bill 6338 (Substitute H-2 as passed by the House)
Sponsor: Representative Andrew Richner
House Committee: Insurance and Financial Services
Senate Committee: Financial Services

CONTENT

The bill would create the "Uniform Securities Act (2002)" and repeal the existing Uniform Securities Act (Public Act 265 of 1964). The bill would do the following:

- Require the Office of Financial and Insurance Services (OFIS), in its discretion, to cooperate, coordinate, consult, and share information with the securities regulators of other states, Canadian provinces, foreign jurisdictions, the Securities and Exchange Commission, the U.S. Department of Justice, and certain other entities, in order to effectuate greater uniformity in securities matters.
- Permit OFIS to assist the securities regulator of another state or a foreign jurisdiction in an investigation of a securities violation.
- Authorize the electronic filing of records and signatures, and include information stored in an electronic medium in the definition of "record".
- Include viatical settlement agreements in the definition of "security".
- Re-enact, modify, and expand provisions concerning Federal covered securities and Federal covered investment advisers (which were added to the current Act by Public Act 494 of 2000).
- Provide that a rule or order could require the filing of certain records (a "notice filing") with respect to a Federal covered security that was not exempt from registration.
- Exempt from securities registration a sale or offer to sell to an institutional investor, a Federal covered investment adviser, or any other person exempted by rule or order.
- Specify exemptions from registration that would address certain employee plans, trusts, nonprofit tax-exempt organizations, small business investment companies, and private business development companies.
- Provide for a limited offering transaction exemption that would reach 25 people (rather than 10 as currently provided).
- Authorize OFIS to waive or modify requirements for a Federal covered security notice filing, registration by coordination, or registration by qualification, or the requirement of any information or record in a registration statement or in a periodic report.
- Provide for the registration of investment adviser representatives, as well as broker-dealers, agents, and investment advisers, and exempt certain people from having to register or to file as a Federal covered investment adviser.
- Create the "Securities Investigation, Enforcement, and Education Fund"; require all fees and civil fines to be deposited into the Fund; and require OFIS to use the money to pay expenses of investigation, enforcement, and public educational programs.
- Allow OFIS to impose a civil penalty of up to \$10,000 for a single violation, or \$500,000 for multiple violations, on a registrant, a partner, officer, or director of a broker-dealer or investment adviser, or a person controlling a broker-dealer or investment adviser. (The current maximum fine that OFIS may impose is \$1,000.)
- Allow OFIS to bring an action in circuit court to enjoin a violation, and allow the court to issue an injunction, order an asset freeze, order OFIS to take control of a defendant's

- property, order payment of a maximum civil fine of \$10,000 for a single violation or \$500,000 for multiple violations, order rescission, restitution, or disgorgement, order payment of prejudgment and postjudgment interest, and grant other appropriate relief.
- Establish a criminal penalty of up to 10 years' imprisonment and/or a maximum fine of \$500,000, for a willful violation. (The current maximum criminal fine is \$25,000.)
 - Establish a period of limitations on a civil action for relief, depending on the violation, of either 1) two years after a violation occurred, or 2) two years after discovery of the facts constituting the violation or five years after the violation occurred.
 - Describe records that would not be public records, and allow OFIS to disclose a record obtained in connection with an audit, inspection, or investigation, for the purpose of a civil, administrative, or criminal investigation, action, or proceeding, or to the securities regulator of another jurisdiction or an entity listed in the bill.

BACKGROUND

The National Conference of Commissioners on Uniform State Laws (NCCUSL) approved a new Uniform Securities Act in August 2002. According to the Uniform Law Commissioners, "The Uniform Securities Act was originally promulgated by the NCCUSL in 1956 and then substantially revised in 1985. The enactment of the federal National Securities Markets Improvement Act (NSMIA) in 1996 preempted some of the regulatory authority of the states. This fact, the need to address recent advances in the technology of securities regulation, and the increasingly interstate and international aspects of security transactions, prompted NCCUSL to draft the new act."

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would create the "Securities Investigation, Enforcement, and Education Fund" into which fine revenue would be deposited. Currently, this revenue is deposited into the General Fund. This change would mean a reduction in revenue into the General Fund. Total revenue generated from these fines in past years has been approximately \$1,000.

Date Completed: 12-26-02

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