

# An Act

ENROLLED SENATE  
BILL NO. 568

By: Montgomery of the Senate

and

Hilbert of the House

An Act relating to securities; amending 71 O.S. 2011, Section 1-202, which relates to exempt transactions; modifying statutory references; exempting certain securities offerings; requiring certain federal exemption for intrastate offerings; limiting certain aggregate amount; setting value amount per person; excepting certain invertors from stated value amount; prohibiting remuneration to nonregistered broker-dealers; requiring purchases for investment; directing distribution of a disclosure document; providing for certain notice to be filed within certain time; requiring quarterly and fiscal year-end reports; stating content to certain reports; providing for escrow accounts for certain purpose; directing use of escrow funds; prohibiting offering of securities under certain conditions; stating conditions; prohibiting certain acts within certain time of offering; construing general solicitation and advertising; authorizing the Administrator to further condition the exemption; directing rules be promulgated within certain time; providing for noncodification; and declaring an emergency.

SUBJECT: Securities

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 71 O.S. 2011, Section 1-202, is amended to read as follows:

Section 1-202. The following transactions are exempt from the requirements of Sections ~~10 and 32 of this act~~ 1-301 and 1-504 of the Oklahoma Uniform Securities Act of 2004:

1. An isolated nonissuer transaction, whether or not effected by or through a broker-dealer ~~or not~~;

2. A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under ~~this act~~ the Oklahoma Uniform Securities Act of 2004, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

- a. the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person,
- b. the security is sold at a price reasonably related to its current market price,
- c. the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution, and
- d. a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this act or a record filed with the Securities and Exchange Commission that is publicly available contains:
  - (1) a description of the business and operations of the issuer,

- (2) the names of the issuer's executive officers and the names of the issuer's directors, if any,
  - (3) an audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization, and
  - (4) an audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement, or
- e. the issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; or the issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or the issuer of the security has total assets of at least Two Million Dollars (\$2,000,000.00) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;

3. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security of a foreign issuer that is a margin security defined in regulations

or rules adopted by the Board of Governors of the Federal Reserve System;

4. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under ~~this act~~ the Oklahoma Uniform Securities Act of 2004 in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

5. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under ~~this act~~ the Oklahoma Uniform Securities Act of 2004 in a security that:

- a. is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories, or
- b. has a fixed maturity or a fixed interest or dividend, if:
  - (1) a default has not occurred during the current fiscal year or within the three (3) previous fiscal years or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security, and
  - (2) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

6. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under ~~this act~~ the Oklahoma

Uniform Securities Act of 2004 effecting an unsolicited order or offer to purchase;

7. A nonissuer transaction executed by a bona fide pledgee without the purpose of evading ~~this act~~ the Oklahoma Uniform Securities Act of 2004;

8. A nonissuer transaction by a federal covered investment adviser with investments under management in excess of One Hundred Million Dollars (\$100,000,000.00) acting in the exercise of discretionary authority in a signed record for the account of others;

9. A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the Administrator after a hearing;

10. A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

11. A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

- a. the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit,
- b. a general solicitation or general advertisement of the transaction is not made, and
- c. a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under ~~this act~~ the Oklahoma Uniform Securities Act of 2004 as a broker-dealer or as an agent;

12. A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

13. A sale or offer to sell to:

- a. an institutional investor,
- b. a federal covered investment adviser, or
- c. any other person exempted by rule adopted or order issued under ~~this act~~ the Oklahoma Uniform Securities Act of 2004;

14. A sale or an offer to sell securities by an issuer, if the transaction is part of a single issue in which:

- a. not more than twenty-five purchasers during any twelve (12) consecutive months, other than those designated in paragraph 13 of this section,
- b. a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities,
- c. a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under ~~this act~~ the Oklahoma Uniform Securities Act of 2004 or an agent registered under ~~this act~~ the Oklahoma Uniform Securities Act of 2004 for soliciting a prospective purchaser in this state, and
- d. the issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph 13 of this section, are purchasing for investment;

15. A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if:

- a. no commission or other remuneration, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state, or
- b. the issuer first files a notice specifying the terms of the offer and the Administrator, by order, does not disallow the exemption within the next ten (10) full business days;

16. A sale from or in this state to not more than thirty-two persons of a unit consisting of interests in oil, gas or mining titles or leases or any certificate of interest or participation, or conveyance in any form of an interest therein, or in payments out of production pursuant to such titles or leases, whether or not offered in conjunction with, or as an incident to, an operating agreement or other contract to drill oil or gas wells or otherwise exploit the minerals on the particular leases, whether or not the seller or any buyers are then present in this state, if:

- a. the seller reasonably believes that all buyers are purchasing for investment,
- b. no commission is paid or given directly or indirectly for the solicitation of any such sale excluding any commission paid or given by and between parties each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals,
- c. no public advertising or public solicitation is used in any such solicitation or sale, and
- d. sales are effected only to persons the seller has reasonable cause to believe are capable of evaluating the risk of the prospective investment and able to bear the economic risk of the investment; but the Administrator, by rule or order, as to any specific transaction, may withdraw or further condition this exemption or decrease the number of sales permitted or waive the conditions in subparagraphs a, b and c of this paragraph, with or without substitution of a limitation on remuneration.

For purposes of this subsection, no units of the issuer shall be integrated; however, this exemption cannot be combined or used in conjunction with any other transactional exemption.

17. An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

- a. a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165), and
- b. no stop order of which the offeror is aware has been issued against the offeror by the Administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

18. An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

- a. a registration statement has been filed under this act, but is not effective,
- b. a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the Administrator under ~~this act~~ the Oklahoma Uniform Securities Act of 2004, and
- c. a stop order of which the offeror is aware has not been issued by the Administrator under ~~this act~~ the Oklahoma Uniform Securities Act of 2004 and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

19. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent



or subsidiary and the other person, or its parent or subsidiary, are parties if:

- a. the securities to be distributed are registered under the Securities Act of 1933 before the vote by security holders on the transaction, or
- b. the securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited from such security holders is given to the Administrator at least ten (10) full business days before the vote by security holders on the transaction and the Administrator does not commence a proceeding to deny the exemption within the next ten (10) full business days; however, such notice shall not be required if the sole purpose of the transaction is to change an issuer's domicile solely within the United States;

20. A rescission offer, sale, or purchase under Section 38 of ~~this act~~ the Oklahoma Uniform Securities Act of 2004;

21. An offer or sale of a security through a broker-dealer registered under ~~this act~~ the Oklahoma Uniform Securities Act of 2004 to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade the Oklahoma Uniform Securities Act of 2004~~this act~~;

22. Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

- a. directors; general partners; trustees, if the issuer is a business trust; and officers,
- b. family members who acquire such securities from those persons through gifts or domestic relations orders,
- c. former employees, directors, general partners, trustees, and officers if those individuals were employed by or providing services to the issuer when the securities were offered, and
- d. insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations;

23. A transaction involving:

- a. a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock,
- b. an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, or
- c. the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); ~~or~~

24. A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under

this act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under ~~this act~~ the Oklahoma Uniform Securities Act of 2004; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under ~~this act~~ the Oklahoma Uniform Securities Act of 2004, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with the Administrative Procedures Act, the Administrator, by rule adopted or order issued under ~~this act~~ the Oklahoma Uniform Securities Act of 2004, may revoke the designation of a securities exchange under this paragraph, if the Administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors; or

25. A sale or offer to sell a security by an issuer if:

- a. the issuer is a corporation or other business entity residing in and doing business in this state and the transaction meets the requirements of the federal exemption for intrastate offerings in Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. 77c(a)(11) and Rule 147A adopted under the Securities Act of 1933 (17 C.F.R. 230.147A) and as such the securities shall be sold only to persons who are residents of this state at the time of purchase,
- b. the sum of all cash and other consideration to be received for the sale of securities in reliance on this exemption shall be limited to Five Million Dollars (\$5,000,000.00),
- c. the aggregate value of securities sold under this exemption by an issuer to any one person does not exceed Five Thousand Dollars (\$5,000.00) unless the

purchaser is an accredited investor as that term is defined by Rule 501 of Regulation D of the Securities Act of 1933 (17 C.F.R. 230.501),

- d. a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under the Oklahoma Uniform Securities Act of 2004 as a broker-dealer or as an agent,
- e. the issuer reasonably believes that all purchasers are purchasing for investment and not for sale in connection with a distribution of the security,
- f. the issuer distributes to prospective purchasers a disclosure document containing the information set forth by rule adopted under the Oklahoma Uniform Securities Act of 2004,
- g. the issuer, at least ten (10) business days prior to a sale, files a notice of exemption with the Department accompanied by the disclosure document required by paragraph f of this subsection, and the filing fee set forth in the Oklahoma Uniform Securities Act of 2004, pursuant to Section 1-612 of Title 71 of the Oklahoma Statutes,
- h. the issuer files with the Department, for as long as the offering is continuing, quarterly and fiscal year-end reports containing any changes to information that has become inaccurate or incomplete in any material respect including, but not limited to, the most recent financial statements, and
- i. the issuer holds funds received from sales made in reliance on this exemption in an escrow account established in a bank or depository institution authorized to do business in this state and subject to regulation under the laws of the United States or under the laws of this state until the aggregate funds raised from all purchases is equal to or greater than the minimum target offering amount specified in the disclosure document. All funds shall be used in

accordance with the representations made by the issuer in the disclosure document required by subparagraph f of this paragraph.

Notwithstanding the foregoing provisions of this subsection, an issuer shall be prohibited from offering securities under this subsection if the issuer or any of its principals or control persons:

- (1) within the last five (5) years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission,
- (2) within the last five (5) years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security or involving fraud or deceit,
- (3) is currently subject to any state or federal administrative enforcement order or judgment entered within the last five (5) years finding fraud or deceit in connection with the purchase or sale of any security, or
- (4) is currently subject to any order, judgment or decree of any court of competent jurisdiction entered within the last five (5) years temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

Nothing in this subsection prohibits the use of general solicitation or general advertising in connection with the exemption under this subsection.

As to a particular offering, the Administrator may by rule or order withdraw or further condition the exemption under this subsection.

SECTION 2. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Department shall promulgate rules pursuant to the provisions of this act within ninety (90) days of the effective date of this act.

SECTION 3. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 11th day of March, 2021.

\_\_\_\_\_  
Presiding Officer of the Senate

Passed the House of Representatives the 12th day of April, 2021.

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_