

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 568

 By: Montgomery of the Senate

 and

 Hilbert of the House

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10 An Act relating to securities; amending 71 O.S. 2011,
11 Section 1-202, which relates to exempt transactions;
12 modifying statutory references; exempting certain
13 securities offerings; requiring certain federal
14 exemption for intrastate offerings; limiting certain
15 aggregate amount; setting value amount per person;
16 excepting certain invertors from stated value amount;
17 prohibiting remuneration to nonregistered broker-
18 dealers; requiring purchases for investment;
19 directing distribution of a disclosure document;
20 providing for certain notice to be filed within
21 certain time; requiring quarterly and fiscal year-end
22 reports; stating content to certain reports;
23 providing for escrow accounts for certain purpose;
24 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.

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

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

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

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

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

16 a. the issuer of the security is engaged in business, the
17 issuer is not in the organizational stage or in
18 bankruptcy or receivership, and the issuer is not a
19 blank check, blind pool, or shell company that has no
20 specific business plan or purpose or has indicated
21 that its primary business plan is to engage in a
22 merger or combination of the business with, or an
23 acquisition of, an unidentified person,

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- 1 b. the security is sold at a price reasonably related to
2 its current market price,
- 3 c. the security does not constitute the whole or part of
4 an unsold allotment to, or a subscription or
5 participation by, the broker-dealer as an underwriter
6 of the security or a redistribution, and
- 7 d. a nationally recognized securities manual or its
8 electronic equivalent designated by rule adopted or
9 order issued under this act or a record filed with the
10 Securities and Exchange Commission that is publicly
11 available contains:
- 12 (1) a description of the business and operations of
13 the issuer,
- 14 (2) the names of the issuer's executive officers and
15 the names of the issuer's directors, if any,
- 16 (3) an audited balance sheet of the issuer as of a
17 date within eighteen (18) months before the date
18 of the transaction or, in the case of a
19 reorganization or merger when the parties to the
20 reorganization or merger each had an audited
21 balance sheet, a pro forma balance sheet for the
22 combined organization, and
- 23 (4) an audited income statement for each of the
24 issuer's two (2) immediately previous fiscal

1 years or for the period of existence of the
2 issuer, whichever is shorter, or, in the case of
3 a reorganization or merger when each party to the
4 reorganization or merger had audited income
5 statements, a pro forma income statement, or
6 e. the issuer of the security has a class of equity
7 securities listed on a national securities exchange
8 registered under the Securities Exchange Act of 1934
9 or designated for trading on the National Association
10 of Securities Dealers Automated Quotation System,
11 unless the issuer of the security is a unit investment
12 trust registered under the Investment Company Act of
13 1940; or the issuer of the security, including its
14 predecessors, has been engaged in continuous business
15 for at least three (3) years; or the issuer of the
16 security has total assets of at least Two Million
17 Dollars (\$2,000,000.00) based on an audited balance
18 sheet as of a date within eighteen (18) months before
19 the date of the transaction or, in the case of a
20 reorganization or merger when the parties to the
21 reorganization or merger each had the audited balance
22 sheet, a pro forma balance sheet for the combined
23 organization;

1 3. A nonissuer transaction by or through a broker-dealer
2 registered or exempt from registration under this act in a security
3 of a foreign issuer that is a margin security defined in regulations
4 or rules adopted by the Board of Governors of the Federal Reserve
5 System;

6 4. A nonissuer transaction by or through a broker-dealer
7 registered or exempt from registration under ~~this act~~ the Oklahoma
8 Uniform Securities Act of 2004 in an outstanding security if the
9 guarantor of the security files reports with the Securities and
10 Exchange Commission under the reporting requirements of Section 13
11 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or
12 78o(d));

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

- 16 a. is rated at the time of the transaction by a
17 nationally recognized statistical rating organization
18 in one of its four highest rating categories, or
- 19 b. has a fixed maturity or a fixed interest or dividend,
20 if:
 - 21 (1) a default has not occurred during the current
22 fiscal year or within the three (3) previous
23 fiscal years or during the existence of the
24 issuer and any predecessor if less than three (3)

1 fiscal years, in the payment of principal,
2 interest, or dividends on the security, and
3 (2) the issuer is engaged in business, is not in the
4 organizational stage or in bankruptcy or
5 receivership, and is not and has not been within
6 the previous twelve (12) months a blank check,
7 blind pool, or shell company that has no specific
8 business plan or purpose or has indicated that
9 its primary business plan is to engage in a
10 merger or combination of the business with, or an
11 acquisition of, an unidentified person;

12 6. A nonissuer transaction by or through a broker-dealer
13 registered or exempt from registration under ~~this act~~ the Oklahoma
14 Uniform Securities Act of 2004 effecting an unsolicited order or
15 offer to purchase;

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

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

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

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

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

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

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

4 13. A sale or offer to sell to:

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

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

- 12 a. not more than twenty-five purchasers during any twelve
13 (12) consecutive months, other than those designated
14 in paragraph 13 of this section,
- 15 b. a general solicitation or general advertising is not
16 made in connection with the offer to sell or sale of
17 the securities,
- 18 c. a commission or other remuneration is not paid or
19 given, directly or indirectly, to a person other than
20 a broker-dealer registered under ~~this act~~ the Oklahoma
21 Uniform Securities Act of 2004 or an agent registered
22 under ~~this act~~ the Oklahoma Uniform Securities Act of
23 2004 for soliciting a prospective purchaser in this
24 state, and

1 d. the issuer reasonably believes that all the purchasers
2 in this state, other than those designated in
3 paragraph 13 of this section, are purchasing for
4 investment;

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

8 a. no commission or other remuneration, other than a
9 standby commission, is paid or given, directly or
10 indirectly, for soliciting a security holder in this
11 state, or

12 b. the issuer first files a notice specifying the terms
13 of the offer and the Administrator, by order, does not
14 disallow the exemption within the next ten (10) full
15 business days;

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

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

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

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

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

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

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

1 19. A transaction involving the distribution of the securities
2 of an issuer to the security holders of another person in connection
3 with a merger, consolidation, exchange of securities, sale of
4 assets, or other reorganization to which the issuer, or its parent
5 or subsidiary and the other person, or its parent or subsidiary, are
6 parties if:

7 a. the securities to be distributed are registered under
8 the Securities Act of 1933 before the vote by security
9 holders on the transaction, or

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

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

1 21. An offer or sale of a security through a broker-dealer
2 registered under ~~this act~~ the Oklahoma Uniform Securities Act of
3 2004 to a person not a resident of this state and not present in
4 this state if the offer or sale does not constitute a violation of
5 the laws of the state or foreign jurisdiction in which the offeree
6 or purchaser is present and is not part of an unlawful plan or
7 scheme to evade the Oklahoma Uniform Securities Act of 2004~~this~~
8 ~~act~~;

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

- 17 a. directors; general partners; trustees, if the issuer
18 is a business trust; and officers,
- 19 b. family members who acquire such securities from those
20 persons through gifts or domestic relations orders,
- 21 c. former employees, directors, general partners,
22 trustees, and officers if those individuals were
23 employed by or providing services to the issuer when
24 the securities were offered, and

1 d. insurance agents who are exclusive insurance agents of
2 the issuer, or the issuer's subsidiaries or parents,
3 or who derive more than fifty percent (50%) of their
4 annual income from those organizations;

5 23. A transaction involving:

6 a. a stock dividend or equivalent equity distribution,
7 whether the corporation or other business organization
8 distributing the dividend or equivalent equity
9 distribution is the issuer or not, if nothing of value
10 is given by stockholders or other equity holders for
11 the dividend or equivalent equity distribution other
12 than the surrender of a right to a cash or property
13 dividend if each stockholder or other equity holder
14 may elect to take the dividend or equivalent equity
15 distribution in cash, property, or stock,

16 b. an act incident to a judicially approved
17 reorganization in which a security is issued in
18 exchange for one or more outstanding securities,
19 claims, or property interests, or partly in such
20 exchange and partly for cash, or

21 c. the solicitation of tenders of securities by an
22 offeror in a tender offer in compliance with Rule 162
23 adopted under the Securities Act of 1933 (17 C.F.R.
24 230.162); ~~or~~

1 24. A nonissuer transaction in an outstanding security by or
2 through a broker-dealer registered or exempt from registration under
3 this act, if the issuer is a reporting issuer in a foreign
4 jurisdiction designated by this paragraph or by rule adopted or
5 order issued under ~~this act~~ the Oklahoma Uniform Securities Act of
6 2004; has been subject to continuous reporting requirements in the
7 foreign jurisdiction for not less than one hundred eighty (180) days
8 before the transaction; and the security is listed on the foreign
9 jurisdiction's securities exchange that has been designated by this
10 paragraph or by rule adopted or order issued under ~~this act~~ the
11 Oklahoma Uniform Securities Act of 2004, or is a security of the
12 same issuer that is of senior or substantially equal rank to the
13 listed security or is a warrant or right to purchase or subscribe to
14 any of the foregoing. For purposes of this paragraph, Canada,
15 together with its provinces and territories, is a designated foreign
16 jurisdiction and The Toronto Stock Exchange, Inc., is a designated
17 securities exchange. After an administrative hearing in compliance
18 with the Administrative Procedures Act, the Administrator, by rule
19 adopted or order issued under ~~this act~~ the Oklahoma Uniform
20 Securities Act of 2004, may revoke the designation of a securities
21 exchange under this paragraph, if the Administrator finds that
22 revocation is necessary or appropriate in the public interest and
23 for the protection of investors; or

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

- 1 a. the issuer is a corporation or other business entity
2 residing in and doing business in this state and the
3 transaction meets the requirements of the federal
4 exemption for intrastate offerings in Section 3(a)(11)
5 of the Securities Act of 1933, 15 U.S.C. 77c(a)(11)
6 and Rule 147A adopted under the Securities Act of 1933
7 (17 C.F.R. 230.147A) and as such the securities shall
8 be sold only to persons who are residents of this
9 state at the time of purchase,
- 10 b. the sum of all cash and other consideration to be
11 received for the sale of securities in reliance on
12 this exemption shall be limited to Five Million
13 Dollars (\$5,000,000.00),
- 14 c. the aggregate value of securities sold under this
15 exemption by an issuer to any one person does not
16 exceed Five Thousand Dollars (\$5,000.00) unless the
17 purchaser is an accredited investor as that term is
18 defined by Rule 501 of Regulation D of the Securities
19 Act of 1933 (17 C.F.R. 230.501),
- 20 d. a commission or other remuneration is not paid or
21 given, directly or indirectly, to a person not
22 registered under the Oklahoma Uniform Securities Act
23 of 2004 as a broker-dealer or as an agent,
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- 1 e. the issuer reasonably believes that all purchasers are
2 purchasing for investment and not for sale in
3 connection with a distribution of the security,
- 4 f. the issuer distributes to prospective purchasers a
5 disclosure document containing the information set
6 forth by rule adopted under the Oklahoma Uniform
7 Securities Act of 2004,
- 8 g. the issuer, at least ten (10) business days prior to a
9 sale, files a notice of exemption with the Department
10 accompanied by the disclosure document required by
11 paragraph f of this subsection, and the filing fee set
12 forth in the Oklahoma Uniform Securities Act of 2004,
13 pursuant to Section 1-612 of Title 71 of the Oklahoma
14 Statutes,
- 15 h. the issuer files with the Department, for as long as
16 the offering is continuing, quarterly and fiscal year-
17 end reports containing any changes to information that
18 has become inaccurate or incomplete in any material
19 respect including, but not limited to, the most recent
20 financial statements, and
- 21 i. the issuer holds funds received from sales made in
22 reliance on this exemption in an escrow account
23 established in a bank or depository institution
24 authorized to do business in this state and subject to

1 regulation under the laws of the United States or
2 under the laws of this state until the aggregate funds
3 raised from all purchases is equal to or greater than
4 the minimum target offering amount specified in the
5 disclosure document. All funds shall be used in
6 accordance with the representations made by the issuer
7 in the disclosure document required by subparagraph f
8 of this paragraph.

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

- 13 (1) within the last five (5) years has filed a
14 registration statement that is the subject of a
15 currently effective registration stop order
16 entered by any state securities administrator or
17 the Securities and Exchange Commission,
- 18 (2) within the last five (5) years has been convicted
19 of any criminal offense in connection with the
20 offer, purchase, or sale of any security or
21 involving fraud or deceit,
- 22 (3) is currently subject to any state or federal
23 administrative enforcement order or judgment
24 entered within the last five (5) years finding

1 fraud or deceit in connection with the purchase
2 or sale of any security, or

3 (4) is currently subject to any order, judgment or
4 decree of any court of competent jurisdiction
5 entered within the last five (5) years
6 temporarily, preliminarily or permanently
7 restraining or enjoining such party from engaging
8 in or continuing to engage in any conduct or
9 practice involving fraud or deceit in connection
10 with the purchase or sale of any security.

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

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

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

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

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

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4 COMMITTEE REPORT BY: COMMITTEE ON BANKING, FINANCIAL SERVICES AND
5 PENSIONS, dated 03/29/2021 - DO PASS.

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