

1 ENGROSSED SENATE
2 BILL NO. 568

By: Montgomery of the Senate

and

Hilbert of the House

3
4
5
6 An Act relating to securities; amending 71 O.S. 2011,
7 Section 1-202, which relates to exempt transactions;
8 modifying statutory references; exempting certain
9 securities offerings; requiring certain federal
10 exemption for intrastate offerings; limiting certain
11 aggregate amount; setting value amount per person;
12 excepting certain invertors from stated value amount;
13 prohibiting remuneration to nonregistered broker-
14 dealers; requiring purchases for investment;
15 directing distribution of a disclosure document;
16 providing for certain notice to be filed within
17 certain time; requiring quarterly and fiscal year-end
18 reports; stating content to certain reports;
19 providing for escrow accounts for certain purpose;
20 directing use of escrow funds; prohibiting offering
21 of securities under certain conditions; stating
22 conditions; prohibiting certain acts within certain
23 time of offering; construing general solicitation and
24 advertising; authorizing the Administrator to further
condition the exemption; directing rules be
promulgated within certain time; providing for
noncodification; and declaring an emergency.

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

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

- 10 a. the issuer of the security is engaged in business, the
11 issuer is not in the organizational stage or in
12 bankruptcy or receivership, and the issuer is not a
13 blank check, blind pool, or shell company that has no
14 specific business plan or purpose or has indicated
15 that its primary business plan is to engage in a
16 merger or combination of the business with, or an
17 acquisition of, an unidentified person,
- 18 b. the security is sold at a price reasonably related to
19 its current market price,
- 20 c. the security does not constitute the whole or part of
21 an unsold allotment to, or a subscription or
22 participation by, the broker-dealer as an underwriter
23 of the security or a redistribution, and
24

1 d. a nationally recognized securities manual or its
2 electronic equivalent designated by rule adopted or
3 order issued under this act or a record filed with the
4 Securities and Exchange Commission that is publicly
5 available contains:

6 (1) a description of the business and operations of
7 the issuer,

8 (2) the names of the issuer's executive officers and
9 the names of the issuer's directors, if any,

10 (3) an audited balance sheet of the issuer as of a
11 date within eighteen (18) months before the date
12 of the transaction or, in the case of a
13 reorganization or merger when the parties to the
14 reorganization or merger each had an audited
15 balance sheet, a pro forma balance sheet for the
16 combined organization, and

17 (4) an audited income statement for each of the
18 issuer's two (2) immediately previous fiscal
19 years or for the period of existence of the
20 issuer, whichever is shorter, or, in the case of
21 a reorganization or merger when each party to the
22 reorganization or merger had audited income
23 statements, a pro forma income statement, or
24

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

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

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

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

11 a. is rated at the time of the transaction by a
12 nationally recognized statistical rating organization
13 in one of its four highest rating categories, or

14 b. has a fixed maturity or a fixed interest or dividend,
15 if:

16 (1) a default has not occurred during the current
17 fiscal year or within the three (3) previous
18 fiscal years or during the existence of the
19 issuer and any predecessor if less than three (3)
20 fiscal years, in the payment of principal,
21 interest, or dividends on the security, and

22 (2) the issuer is engaged in business, is not in the
23 organizational stage or in bankruptcy or
24 receivership, and is not and has not been within

1 the previous twelve (12) months a blank check,
2 blind pool, or shell company that has no specific
3 business plan or purpose or has indicated that
4 its primary business plan is to engage in a
5 merger or combination of the business with, or an
6 acquisition of, an unidentified person;

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

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

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

19 9. A transaction in a security, whether or not the security or
20 transaction is otherwise exempt, in exchange for one or more bona
21 fide outstanding securities, claims, or property interests, or
22 partly in such exchange and partly for cash, if the terms and
23 conditions of the issuance and exchange or the delivery and exchange
24

1 and the fairness of the terms and conditions have been approved by
2 the Administrator after a hearing;

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

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

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

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

22 13. A sale or offer to sell to:

- 23 a. an institutional investor,
- 24 b. a federal covered investment adviser, or

1 c. any other person exempted by rule adopted or order
2 issued under ~~this act~~ the Oklahoma Uniform Securities
3 Act of 2004;

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

6 a. not more than twenty-five purchasers during any twelve
7 (12) consecutive months, other than those designated
8 in paragraph 13 of this section,

9 b. a general solicitation or general advertising is not
10 made in connection with the offer to sell or sale of
11 the securities,

12 c. a commission or other remuneration is not paid or
13 given, directly or indirectly, to a person other than
14 a broker-dealer registered under ~~this act~~ the Oklahoma
15 Uniform Securities Act of 2004 or an agent registered
16 under ~~this act~~ the Oklahoma Uniform Securities Act of
17 2004 for soliciting a prospective purchaser in this
18 state, and

19 d. the issuer reasonably believes that all the purchasers
20 in this state, other than those designated in
21 paragraph 13 of this section, are purchasing for
22 investment;

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

4 a. no commission or other remuneration, other than a
5 standby commission, is paid or given, directly or
6 indirectly, for soliciting a security holder in this
7 state, or

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

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

21 a. the seller reasonably believes that all buyers are
22 purchasing for investment,

23 b. no commission is paid or given directly or indirectly
24 for the solicitation of any such sale excluding any

1 commission paid or given by and between parties each
2 of whom is engaged in the business of exploring for or
3 producing oil and gas or other valuable minerals,

4 c. no public advertising or public solicitation is used
5 in any such solicitation or sale, and

6 d. sales are effected only to persons the seller has
7 reasonable cause to believe are capable of evaluating
8 the risk of the prospective investment and able to
9 bear the economic risk of the investment; but the
10 Administrator, by rule or order, as to any specific
11 transaction, may withdraw or further condition this
12 exemption or decrease the number of sales permitted or
13 waive the conditions in subparagraphs a, b and c of
14 this paragraph, with or without substitution of a
15 limitation on remuneration.

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

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

21 a. a registration or offering statement or similar record
22 as required under the Securities Act of 1933 has been
23 filed, but is not effective, or the offer is made in
24

1 compliance with Rule 165 adopted under the Securities
2 Act of 1933 (17 C.F.R. 230.165), and

- 3 b. no stop order of which the offeror is aware has been
4 issued against the offeror by the Administrator or the
5 Securities and Exchange Commission, and an audit,
6 inspection, or proceeding that is public and that may
7 culminate in a stop order is not known by the offeror
8 to be pending;

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

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

22 19. A transaction involving the distribution of the securities
23 of an issuer to the security holders of another person in connection
24 with a merger, consolidation, exchange of securities, sale of

1 assets, or other reorganization to which the issuer, or its parent
2 or subsidiary and the other person, or its parent or subsidiary, are
3 parties if:

4 a. the securities to be distributed are registered under
5 the Securities Act of 1933 before the vote by security
6 holders on the transaction, or

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

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

22 21. An offer or sale of a security through a broker-dealer
23 registered under ~~this act~~ the Oklahoma Uniform Securities Act of
24 2004 to a person not a resident of this state and not present in

1 this state if the offer or sale does not constitute a violation of
2 the laws of the state or foreign jurisdiction in which the offeree
3 or purchaser is present and is not part of an unlawful plan or
4 scheme to evade the Oklahoma Uniform Securities Act of 2004~~this~~
5 ~~act~~;

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

- 14 a. directors; general partners; trustees, if the issuer
15 is a business trust; and officers,
- 16 b. family members who acquire such securities from those
17 persons through gifts or domestic relations orders,
- 18 c. former employees, directors, general partners,
19 trustees, and officers if those individuals were
20 employed by or providing services to the issuer when
21 the securities were offered, and
- 22 d. insurance agents who are exclusive insurance agents of
23 the issuer, or the issuer's subsidiaries or parents,

24

1 or who derive more than fifty percent (50%) of their
2 annual income from those organizations;

3 23. A transaction involving:

- 4 a. a stock dividend or equivalent equity distribution,
5 whether the corporation or other business organization
6 distributing the dividend or equivalent equity
7 distribution is the issuer or not, if nothing of value
8 is given by stockholders or other equity holders for
9 the dividend or equivalent equity distribution other
10 than the surrender of a right to a cash or property
11 dividend if each stockholder or other equity holder
12 may elect to take the dividend or equivalent equity
13 distribution in cash, property, or stock,
- 14 b. an act incident to a judicially approved
15 reorganization in which a security is issued in
16 exchange for one or more outstanding securities,
17 claims, or property interests, or partly in such
18 exchange and partly for cash, or
- 19 c. the solicitation of tenders of securities by an
20 offeror in a tender offer in compliance with Rule 162
21 adopted under the Securities Act of 1933 (17 C.F.R.
22 230.162); ~~or~~

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

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

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

- 23 a. the issuer is a corporation or other business entity
24 residing in and doing business in this state and the

1 transaction meets the requirements of the federal
2 exemption for intrastate offerings in Section 3(a)(11)
3 of the Securities Act of 1933, 15 U.S.C. 77c(a)(11)
4 and Rule 147A adopted under the Securities Act of 1933
5 (17 C.F.R. 230.147A) and as such the securities shall
6 be sold only to persons who are residents of this
7 state at the time of purchase,

8 b. the sum of all cash and other consideration to be
9 received for the sale of securities in reliance on
10 this exemption shall be limited to Five Million
11 Dollars (\$5,000,000.00),

12 c. the aggregate value of securities sold under this
13 exemption by an issuer to any one person does not
14 exceed Five Thousand Dollars (\$5,000.00) unless the
15 purchaser is an accredited investor as that term is
16 defined by Rule 501 of Regulation D of the Securities
17 Act of 1933 (17 C.F.R. 230.501),

18 d. a commission or other remuneration is not paid or
19 given, directly or indirectly, to a person not
20 registered under the Oklahoma Uniform Securities Act
21 of 2004 as a broker-dealer or as an agent,

22 e. the issuer reasonably believes that all purchasers are
23 purchasing for investment and not for sale in
24 connection with a distribution of the security,

- 1 f. the issuer distributes to prospective purchasers a
2 disclosure document containing the information set
3 forth by rule adopted under the Oklahoma Uniform
4 Securities Act of 2004,
- 5 g. the issuer, at least ten (10) business days prior to a
6 sale, files a notice of exemption with the Department
7 accompanied by the disclosure document required by
8 paragraph f of this subsection, and the filing fee set
9 forth in the Oklahoma Uniform Securities Act of 2004,
10 pursuant to Section 1-612 of Title 71 of the Oklahoma
11 Statutes,
- 12 h. the issuer files with the Department, for as long as
13 the offering is continuing, quarterly and fiscal year-
14 end reports containing any changes to information that
15 has become inaccurate or incomplete in any material
16 respect including, but not limited to, the most recent
17 financial statements, and
- 18 i. the issuer holds funds received from sales made in
19 reliance on this exemption in an escrow account
20 established in a bank or depository institution
21 authorized to do business in this state and subject to
22 regulation under the laws of the United States or
23 under the laws of this state until the aggregate funds
24 raised from all purchases is equal to or greater than

1 the minimum target offering amount specified in the
2 disclosure document. All funds shall be used in
3 accordance with the representations made by the issuer
4 in the disclosure document required by subparagraph f
5 of this paragraph.

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

10 (1) within the last five (5) years has filed a
11 registration statement that is the subject of a
12 currently effective registration stop order
13 entered by any state securities administrator or
14 the Securities and Exchange Commission,

15 (2) within the last five (5) years has been convicted
16 of any criminal offense in connection with the
17 offer, purchase, or sale of any security or
18 involving fraud or deceit,

19 (3) is currently subject to any state or federal
20 administrative enforcement order or judgment
21 entered within the last five (5) years finding
22 fraud or deceit in connection with the purchase
23 or sale of any security, or

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

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

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

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

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

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

