

1 **SENATE FLOOR VERSION**

2 February 11, 2021

3 SENATE BILL NO. 568

By: Montgomery of the Senate

4 and

5 Hilbert of the House

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7
8 An Act relating to securities; providing exempt
9 treatment for certain specified securities pursuant
10 to rules adopted by the United States Securities and
11 Exchange Commission; requiring compliance with
12 certain federal securities laws; providing for
13 disqualification of offerings based on noncompliance;
14 requiring issuer of securities to file notice;
15 prescribing required content of notice; authorizing
16 Oklahoma Securities Department to adopt rules;
17 providing for termination of notice; imposing dollar
18 limitation; prescribing time period; requiring
19 disclosure of terms of issuance; imposing limitation
20 on sale of certain securities within certain time
21 period; providing exception for accredited investor;
22 requiring annual report; providing for suspension of
23 notice filing; providing for duration of suspension;
24 prohibiting materially false statements; imposing
restrictions based on materially false statements;
defining term; requiring offering through Internet
website; imposing restriction on communications;
prescribing requirements for communication; providing
for certain corrective actions; requiring disclosure
statement; prescribing content; providing for
exemption; prohibiting use of exemption under certain
circumstances; prohibiting issuance of securities by
certain issuers based on conduct; authorizing
application for waiver; prescribing procedures for
payments for purchase of securities; authorizing
escrow account; prescribing procedures related to
escrow accounts; providing for account
administration; providing for codification; and
declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-801 of Title 71, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provision of law, a security issued and offered for sale by an issuer pursuant to Section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Section 77c(a)(11)) shall maintain compliance with Rule 147A (17 C.F.R. 230.147A), the federal exemption for intrastate offerings adopted by the U.S. Securities and Exchange Commission (SEC). Failure to maintain compliance shall disqualify an issuer from offering securities pursuant to this act.

B. The issuer must file a notice of the offering with the Oklahoma Department of Securities, in writing or in electronic form, together with a nonrefundable filing fee, in a form and format to be determined by Department rule. The notice filing shall include a notice of exemption and the disclosure statement required by Section 2 of this act. The Department may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means. A notice is effective upon receipt by the Department and payment of the filing fee. The notice may be terminated by filing with the Department a notice of termination.

1 The notice and offering expire twelve (12) months after filing the
2 notice with the Department.

3 C. The issuer must amend the notice within thirty (30) days if,
4 at any time, any material information provided in the notice becomes
5 materially inaccurate.

6 D. The sum of all cash and other consideration received for the
7 sale of securities under this section shall be limited to Five
8 Million Dollars (\$5,000,000.00) within the twelve-month period
9 starting from the effective date of the notice filing. Subject to
10 the integration provisions of Rule 147A, such limit shall be in
11 addition to any other limit available to an issuer under any other
12 federal or Oklahoma exemption. This provision shall not be
13 interpreted to restrict an issuer from offering additional
14 securities intended to qualify under any other exemption under
15 federal or Oklahoma securities laws.

16 E. The aggregate value of securities sold by an issuer to a
17 purchaser in transactions exempt from registration under this
18 section in a twelve-month period shall not exceed Five Thousand
19 Dollars (\$5,000.00); provided, however, if the purchaser is an
20 accredited investor as defined by Rule 501 of Regulation D, adopted
21 by the SEC pursuant to the Securities Act, such purchaser shall not
22 be restricted in the amount of securities purchased. The issuer
23 must have a reasonable basis for believing that the purchaser of a
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1 security qualifying for exemption under this section is an Oklahoma
2 resident and, if applicable, an accredited investor.

3 F. The issuer shall file with the Department and provide to
4 purchasers without cost an annual report of the results of the
5 operations and financial statements of the issuer within sixty (60)
6 days after the end of its fiscal year in a form and manner to be
7 prescribed by the Department until no securities under this offering
8 are outstanding.

9 G. A notice filing under this section shall be immediately
10 suspended by the Department if the payment of the filing fee is
11 dishonored by the financial institution upon which the funds are
12 drawn. The suspension shall remain in effect for fourteen (14)
13 calendar days. If the issuer does not remit the filing fee within
14 fourteen (14) calendar days beginning on the date of the suspension,
15 the Department shall enter a final order revoking the issuer's
16 notice filing.

17 H. A notice filing under this section shall be immediately
18 suspended by the Department if the issuer is determined to have made
19 any materially false statement in the issuer's notice filing. The
20 suspension shall remain in effect until the matter has been
21 investigated by the Department and either the suspension of the
22 notice filing has been removed or a final order is entered by the
23 Department revoking the notice filing. If an issuer is determined
24 to have made any materially false statement in the issuer's notice

1 filing, the Department shall bar the officers, directors and control
2 persons of the issuer from the use of the exemption in this section
3 for a period of five (5) years from the entry date of the final
4 order revoking the notice filing. For the purposes of this act,
5 "control persons" means any officer, director or other person having
6 the power, directly or indirectly, to direct the management or
7 policies of the entity, whether by contract or otherwise; and any
8 person holding twenty percent (20%) or greater of the outstanding
9 equity of the issuer.

10 I. Subject to the requirements of Rule 147A, the issuer may
11 make offers and sales of its securities using any form of general
12 solicitation or advertising, including making the offering available
13 through the issuer's website.

14 J. The issuer shall require evidence from each purchaser of
15 residency within this state before a sale may be made. Such
16 evidence shall include an affirmative representation made by the
17 purchaser that the purchaser is an Oklahoma resident at least
18 eighteen (18) years of age along with any one of the following:

19 1. Valid Oklahoma driver's license or official identification
20 card issued by the State of Oklahoma;

21 2. Current Oklahoma voter registration card; or

22 3. County property tax records showing the individual owns and
23 occupies property in this state as his or her primary residence.

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1 K. The Department shall immediately suspend the notice filing
2 of an issuer in violation of either subsection I or J of this
3 section. If corrective action is not taken by the issuer, the
4 Department shall enter a final order revoking the notice filing and
5 terminating the offering.

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-802 of Title 71, unless there
8 is created a duplication in numbering, reads as follows:

9 The issuer must make available to prospective purchasers, along
10 with a copy to the Oklahoma Department of Securities at the time the
11 notice is filed, a disclosure statement containing material
12 information about the issuer and the offering including, but not
13 limited to:

14 1. The name, legal status, physical address and Internet
15 website of the issuer;

16 2. The names of any and all control persons along with
17 descriptions of each person's background and qualifications;

18 3. A description of the business of the issuer and a history of
19 the issuer's organization and operations;

20 4. A description of the stated purpose and intended use of the
21 proceeds of the offering;

22 5. The target offering amount, the deadline to reach the target
23 offering amount, and any minimum amount required to close the
24 offering if such minimum is less than the target offering amount;

1 6. The price to the public of the securities along with the
2 method for determining the price;

3 7. A description of the ownership and capital structure of the
4 issuer including:

5 a. the terms under which each then outstanding type and
6 class of security was offered,

7 b. the rights granted to owners of each type and class of
8 security then outstanding, and

9 c. how the rights of the securities being offered may be
10 affected by the rights of any other class of security
11 then outstanding of the issuer;

12 8. A description of the financial condition of the issuer to
13 include:

14 a. a copy of the most recent tax return filed by the
15 issuer, if any, and

16 b. financial statements for the previous three (3) years,
17 or, for an issuer in business for less than three (3)
18 years, financial statements for each year the issuer
19 has been operating. The financial statements must be
20 prepared in accordance with generally accepted
21 accounting principles and certified by the principal
22 executive officer of the issuer to be true and
23 complete in all material respects. The financial
24 statements must be reviewed by a certified public

1 accountant independent of the issuer using
2 professional standards and procedures for such review
3 or standards and procedures established by the
4 Department for such purpose;

5 9. Any current or reasonably anticipated litigation or legal
6 proceedings in which the issuer is involved;

7 10. The issuer shall inform all purchasers and prospective
8 purchasers of the following:

- 9 a. there is no ready market for the sale of the
10 securities acquired from this offering; it may be
11 difficult or impossible for a purchaser to sell or
12 otherwise dispose of this investment. A purchaser may
13 be required to hold and bear the financial risks of
14 this investment indefinitely,
- 15 b. the securities have not been registered under federal
16 or state securities laws and, therefore, cannot be
17 resold unless the securities are registered or qualify
18 for an exemption from registration under federal and
19 state law,
- 20 c. in making an investment decision, purchasers must rely
21 on their own examination of the issuer and the terms
22 of the offering including the merits and risks
23 involved, and
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1 d. no federal or state securities commission or
2 regulatory authority has confirmed the accuracy or
3 determined the adequacy of the disclosure statement or
4 any other information on this Internet website.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-803 of Title 71, unless there
7 is created a duplication in numbering, reads as follows:

8 A. An issuer of securities claiming exemption under this
9 section shall be a for-profit business residing in and doing
10 business within the State of Oklahoma.

11 B. An issuer shall be deemed to be a resident of Oklahoma if
12 the issuer's principal place of business is located within the
13 state. The issuer shall be deemed to have its principal place of
14 business in Oklahoma if the officers, partners or managers of the
15 issuer that primarily direct, control and coordinate the activities
16 of the issuer are located within the State of Oklahoma.

17 C. An issuer shall be deemed to be doing business in Oklahoma
18 if the issuer satisfies at least one of the following requirements:

19 1. The issuer derived at least eighty percent (80%) of its
20 consolidated gross revenues from the operation of a business or of
21 real property located in or from the rendering of services within
22 this state;

23 2. The issuer had at the end of its most recent semiannual
24 fiscal period prior to an initial offer of securities in any

1 offering or subsequent offering pursuant to this section, at least
2 eighty percent (80%) of its assets and those of its subsidiaries on
3 a consolidated basis located within this state;

4 3. The issuer intends to use and uses at least eighty percent
5 (80%) of the net proceeds to the issuer from sales made pursuant to
6 this section in connection with the operation of a business or of
7 real property, the purchase of real property located in, or the
8 rendering of services within this state; or

9 4. A majority of the issuer's employees are based in this
10 state.

11 D. An issuer shall not be permitted to use this exemption if:

12 1. A company that has not yet defined its business operations,
13 has no business plan, has no stated investment goal for the funds
14 being raised, or that plans to engage in a merger or acquisition
15 with an unspecified business entity;

16 2. Subject to the reporting requirements of the Securities and
17 Exchange Act of 1934, Section 13 or Section 15(d), 15 U.S.C.,
18 Section 78m and Section 78o(d);

19 3. A control person of the issuer is also a control person of
20 another issuer that has made a securities offering under this
21 exemption within the previous twelve-month period in this state;

22 4. A control person of the issuer is also a control person of
23 another issuer that is concurrently conducting a securities offering
24 under this exemption in this state; or

1 5. The proceeds of the offering will be combined with the
2 proceeds of a securities offering by another issuer as part of a
3 single plan of financing.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-804 of Title 71, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Notwithstanding the foregoing, an issuer shall be prohibited
8 from offering securities under this section if the issuer:

9 1. Within the last five (5) years, has filed a registration
10 statement that is the subject of a currently effective registration
11 stop order entered by any state securities administrator or the SEC;

12 2. Within the last five (5) years, has been convicted of any
13 criminal offense in connection with the offer, purchase or sale of
14 any security, or involving fraud or deceit;

15 3. Is currently subject to any state or federal administrative
16 enforcement order or judgment, entered within the last five (5)
17 years, finding fraud or deceit in connection with the purchase or
18 sale of any security; or

19 4. Is currently subject to any order, judgment or decree of any
20 court of competent jurisdiction, entered within the last five (5)
21 years, temporarily, preliminarily or permanently restraining or
22 enjoining such party from engaging in or continuing to engage in any
23 conduct or practice involving fraud or deceit in connection with the
24 purchase or sale of any security.

1 B. The Department may promulgate additional rules for
2 disqualification of an issuer for the purposes of this act.

3 C. An issuer may apply to the Administrator of the Oklahoma
4 Department of Securities for a waiver from the prohibitions in
5 paragraph 4 of subsection A of this section. Such application shall
6 be in a form and manner prescribed by the Department. The
7 Administrator in his or her discretion may grant such a waiver based
8 on the specific facts and circumstances stated and submitted in
9 writing and attested to under penalty of perjury where the
10 Administrator determines such waiver is appropriate and in the
11 public interest.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-805 of Title 71, unless there
14 is created a duplication in numbering, reads as follows:

15 A. All payments for purchases of securities offered under this
16 section shall be directed to and deposited into an escrow account
17 and all funds shall be used in accordance with the representations
18 made by the issuer to purchasers for such funds. Each security
19 offering shall have a dedicated escrow account. The payments must
20 be held in an escrow account until the aggregate capital raised from
21 all purchases is equal to or greater than the minimum target
22 offering amount specified in the disclosure statement as necessary
23 to implement the business plan. If the target offering amount is

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1 not raised by the stated deadline in the disclosure statement, all
2 subscribed funds shall be returned to purchasers.

3 B. The escrow account must be held at a bank, depository or
4 other financial institution authorized to conduct escrow business in
5 this state and subject to regulation under the laws of the United
6 States or under the laws of this state.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-806 of Title 71, unless there
9 is created a duplication in numbering, reads as follows:

10 The Oklahoma Department of Securities shall promulgate rules and
11 regulations authorized under this act within ninety (90) days of the
12 effective date of this act.

13 SECTION 7. It being immediately necessary for the preservation
14 of the public peace, health or safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

17 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
18 February 11, 2021 - DO PASS
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