

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 568

By: Daniels

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5  
6 AS INTRODUCED

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

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

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

5 A. Notwithstanding any other provision of law, a security  
6 issued and offered for sale by an issuer pursuant to Section  
7 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Section  
8 77c(a)(11)) shall maintain compliance with Rule 147A (17 C.F.R.  
9 230.147A), the federal exemption for intrastate offerings adopted by  
10 the U.S. Securities and Exchange Commission (SEC). Failure to  
11 maintain compliance shall disqualify an issuer from offering  
12 securities pursuant to this act.

13 B. The issuer must file a notice of the offering with the  
14 Oklahoma Department of Securities, in writing or in electronic form,  
15 together with a nonrefundable filing fee, in a form and format to be  
16 determined by Department rule. The notice filing shall include a  
17 notice of exemption and the disclosure statement required by Section  
18 2 of this act. The Department may adopt rules establishing  
19 procedures for the deposit of fees and the filing of documents by  
20 electronic means. A notice is effective upon receipt by the  
21 Department and payment of the filing fee. The notice may be  
22 terminated by filing with the Department a notice of termination.  
23 The notice and offering expire twelve (12) months after filing the  
24 notice with the Department.

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

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

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

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

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

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

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

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

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

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

19 2. Current Oklahoma voter registration card; or

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

22 K. The Department shall immediately suspend the notice filing  
23 of an issuer in violation of either subsection I or J of this  
24 section. If corrective action is not taken by the issuer, the

1 Department shall enter a final order revoking the notice filing and  
2 terminating the offering.

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

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

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

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

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

17 4. A description of the stated purpose and intended use of the  
18 proceeds of the offering;

19 5. The target offering amount, the deadline to reach the target  
20 offering amount, and any minimum amount required to close the  
21 offering if such minimum is less than the target offering amount;

22 6. The price to the public of the securities along with the  
23 method for determining the price;

1           7. A description of the ownership and capital structure of the  
2 issuer including:

- 3           a. the terms under which each then outstanding type and  
4           class of security was offered,
- 5           b. the rights granted to owners of each type and class of  
6           security then outstanding, and
- 7           c. how the rights of the securities being offered may be  
8           affected by the rights of any other class of security  
9           then outstanding of the issuer;

10           8. A description of the financial condition of the issuer to  
11 include:

- 12           a. a copy of the most recent tax return filed by the  
13           issuer, if any, and
- 14           b. financial statements for the previous three (3) years,  
15           or, for an issuer in business for less than three (3)  
16           years, financial statements for each year the issuer  
17           has been operating. The financial statements must be  
18           prepared in accordance with generally accepted  
19           accounting principles and certified by the principal  
20           executive officer of the issuer to be true and  
21           complete in all material respects. The financial  
22           statements must be reviewed by a certified public  
23           accountant independent of the issuer using  
24           professional standards and procedures for such review

1 or standards and procedures established by the  
2 Department for such purpose;

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

5 10. The issuer shall inform all purchasers and prospective  
6 purchasers of the following:

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

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

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

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

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

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

21           2. The issuer had at the end of its most recent semiannual  
22 fiscal period prior to an initial offer of securities in any  
23 offering or subsequent offering pursuant to this section, at least  
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1 eighty percent (80%) of its assets and those of its subsidiaries on  
2 a consolidated basis located within this state;

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

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

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

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

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

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

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

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.

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