

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 985

By: Paxton

AS INTRODUCED

An Act relating to the Oklahoma Uniform Securities Act of 2004; amending 71 O.S. 2021, Section 1-411, as amended by Section 29, Chapter 77, O.S.L. 2022 (71 O.S. Supp. 2022, Section 1-411), which relates to denial or revocation of registration; authorizing certain actions against applicant for registration under certain circumstances; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 71 O.S. 2021, Section 1-411, as amended by Section 29, Chapter 77, O.S.L. 2022 (71 O.S. Supp. 2022, Section 1-411), is amended to read as follows:

Section 1-411. A. If the Administrator finds that the order is in the public interest and subsection D of this section authorizes the action, an order issued under this act may deny an application, or may condition or limit registration:

1. Of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative; and

2. If the applicant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar

1 status or performing similar functions, or any person directly or
2 indirectly controlling the broker-dealer or investment adviser.

3 B. If the Administrator finds that the order issued is in the
4 public interest and subsection D of this section authorizes the
5 action an order issued under this act may revoke, suspend,
6 condition, or limit the registration of a registrant and if the
7 registrant is a broker-dealer or investment adviser, any partner,
8 officer, or director, any person having a similar status or
9 performing similar functions, or any person directly or indirectly
10 controlling the broker-dealer or investment adviser. However, the
11 Administrator:

12 1. May not institute a revocation or suspension proceeding
13 under this subsection based on an order issued by another state that
14 is reported to the Administrator or designee later than one (1) year
15 after the date of the order on which it is based; and

16 2. Under subparagraphs a and b of paragraph 5 of subsection D
17 of this section may not issue an order on the basis of an order
18 under the state securities act of another state unless the other
19 order was based on conduct for which subsection D of this section
20 would authorize the action had the conduct occurred in this state.

21 C. If the Administrator finds that the order is in the public
22 interest and paragraphs 1 through 6, 8, 9, 10, 12 or 13 of
23 subsection D of this section authorizes the action, an order under
24 this act may censure, impose a bar, impose a civil penalty in an

1 amount not to exceed a maximum of Five Thousand Dollars (\$5,000.00)
2 for a single violation or Two Hundred Fifty Thousand Dollars
3 (\$250,000.00) for multiple violations on a registrant, and/or
4 recover the costs of the investigation from a registrant and if the
5 registrant is a broker-dealer or investment adviser, from any
6 partner, officer, or director, any person having a similar function
7 or any person directly or indirectly controlling the broker-dealer
8 or investment adviser.

9 D. A person may be disciplined under subsections A through C of
10 this section if the person:

11 1. Has filed an application for registration in this state
12 under this act within the previous ten (10) years, which, as of the
13 effective date of registration or as of any date after filing in the
14 case of an order denying effectiveness, was incomplete in any
15 material respect or contained a statement that, in light of the
16 circumstances under which it was made, was false or misleading with
17 respect to a material fact;

18 2. Has willfully violated or willfully failed to comply with
19 this act or a rule adopted or order issued under this act within the
20 previous ten (10) years;

21 3. Has been convicted of any felony or within the previous ten
22 (10) years has been convicted of a misdemeanor involving a security,
23 a commodity futures or option contract, or an aspect of a business
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1 involving securities, commodities, investments, franchises,
2 insurance, banking, or finance;

3 4. Is enjoined or restrained by a court of competent
4 jurisdiction in an action instituted by the Administrator under this
5 act, a state, the Securities and Exchange Commission, or the United
6 States from engaging in or continuing an act, practice, or course of
7 business involving an aspect of a business involving securities,
8 commodities, investments, franchises, insurance, banking, or
9 finance;

10 5. Is the subject of an order, issued after notice and
11 opportunity for hearing by:

12 a. the securities, depository institution, insurance or
13 other financial services regulator of a state, or by
14 the Securities and Exchange Commission or other
15 federal agency denying, revoking, barring, or
16 suspending registration as a broker-dealer, agent,
17 investment adviser, federal covered investment
18 adviser, or investment adviser representative,

19 b. the securities regulator of a state or by the
20 Securities and Exchange Commission against a broker-
21 dealer, agent, investment adviser, investment adviser
22 representative, or federal covered investment adviser,

23 c. the Securities and Exchange Commission or by a self-
24 regulatory organization suspending, barring, canceling

1 or expelling the registrant from membership in a self-
2 regulatory organization,

3 d. a court adjudicating a United States Postal Service
4 fraud,

5 e. the insurance regulator of a state denying,
6 suspending, or revoking the registration of an
7 insurance agent, or

8 f. a depository institution regulator suspending or
9 barring a person from the banking or depository
10 institution business;

11 6. Is the subject of an adjudication or determination, after
12 notice and opportunity for hearing, by the Securities and Exchange
13 Commission, the Commodity Futures Trading Commission, the Federal
14 Trade Commission, a federal depository institution regulator, or a
15 depository institution, insurance, or other financial services
16 regulator of a state that the person willfully violated the
17 Securities Act of 1933, the Securities Exchange Act of 1934, the
18 Investment Advisers Act of 1940, the Investment Company Act of 1940,
19 or the Commodity Exchange Act, the securities or commodities law of
20 a state, or a federal or state law under which a business involving
21 investments, franchises, insurance, banking, or finance is
22 regulated;

23 7. Is insolvent, either because the person's liabilities exceed
24 the person's assets or because the person cannot meet the person's

1 obligations as they mature, but the Administrator may not enter an
2 order against an applicant or registrant under this paragraph
3 without a finding of insolvency as to the applicant or registrant;

4 8. Refuses to allow or otherwise impedes the Administrator from
5 conducting an audit or inspection under subsection D of Section 1-
6 410 of this title or refuses access to any registrant's office to
7 conduct an audit or inspection under subsection D of Section 1-410
8 of this title;

9 9. Has failed to reasonably supervise an agent, investment
10 adviser representative, or other individual, if the agent,
11 investment adviser representative, or other individual was subject
12 to the person's supervision and committed a violation of this act or
13 a rule adopted or order issued under this act within the previous
14 ten (10) years;

15 10. Has not paid the proper filing fee within thirty (30) days
16 after having been notified by the Administrator of a deficiency, but
17 the Administrator shall vacate an order under this paragraph when
18 the deficiency is corrected;

19 11. After notice and opportunity for a hearing, has been found
20 within the previous ten (10) years:

- 21 a. by a court of competent jurisdiction to have willfully
22 violated the laws of a foreign jurisdiction under
23 which the business of securities, commodities,
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1 investment, franchises, insurance, banking or finance
2 is regulated,

3 b. to have been the subject of an order of a securities
4 regulator of a foreign jurisdiction denying, revoking,
5 or suspending the right to engage in the business of
6 securities as a broker-dealer, agent, investment
7 adviser, investment adviser representative or similar
8 person, or

9 c. to have been suspended or expelled from membership by
10 or participation in a securities exchange or
11 securities association operating under the securities
12 laws of a foreign jurisdiction;

13 12. Is the subject of a cease and desist order issued by the
14 Securities and Exchange Commission or issued under the securities,
15 commodities, investment, franchise, banking, finance or insurance
16 laws of a state;

17 13. Has engaged in dishonest or unethical practices in the
18 securities, commodities, investment, franchise, banking, finance or
19 insurance business within the previous ten (10) years; or

20 14. Is not qualified on the basis of factors such as training,
21 experience, and knowledge of the securities business. However, in
22 the case of an application by an agent for a broker-dealer that is a
23 member of a self-regulatory organization or by an individual for
24 registration as an investment adviser representative, a denial order

1 may not be based on this paragraph if the individual has
2 successfully completed all examinations required by subsection E of
3 this section. The Administrator may require an applicant for
4 registration under Section 1-402 or 1-404 of this title who has not
5 been registered in a state within the two (2) years preceding the
6 filing of an application in this state to successfully complete an
7 examination.

8 E. A rule adopted or order issued under this act may require
9 that an examination, including an examination developed or approved
10 by an organization of securities regulators, be successfully
11 completed by a class of individuals or all individuals. An order
12 issued under this act may waive, in whole or in part, an examination
13 as to an individual and a rule adopted under this act may waive, in
14 whole or in part, an examination as to a class of individuals if the
15 Administrator determines that the examination is not necessary or
16 appropriate in the public interest and for the protection of
17 investors.

18 F. The Administrator may summarily postpone an application or
19 summarily suspend a registration before final determination of an
20 administrative proceeding. Upon the issuance of the order, the
21 Administrator shall promptly notify each person subject to the order
22 that the order has been issued, the reasons for the action, and that
23 within fifteen (15) days after the receipt of a request in a record
24 from the person the matter will be scheduled for a hearing and such

1 hearing shall be commenced within fifteen (15) days of the matter
2 being set for hearing. If a hearing is not requested and none is
3 ordered by the Administrator, within thirty (30) days after the date
4 of service of the order, the order becomes final by operation of
5 law. If a hearing is requested or ordered, the Administrator, after
6 notice of and opportunity for hearing to each person subject to the
7 order, may modify or vacate the order or extend the order until
8 final determination.

9 G. An order may not be issued under this section, except under
10 subsection F of this section, without:

11 1. Appropriate notice to the applicant or registrant;

12 2. Opportunity for hearing; and

13 3. Findings of fact and conclusions of law in a record in
14 accordance with the Administrative Procedures Act. If the person to
15 whom the notice is addressed does not request a hearing within
16 thirty (30) days after the date of service of the notice, a final
17 order as provided in subsection A, B or C of this section may be
18 issued.

19 H. A person who controls, directly or indirectly, a person not
20 in compliance with this section may be disciplined by order of the
21 Administrator under subsections A through C of this section to the
22 same extent as the noncomplying person, unless the controlling
23 person did not know, and in the exercise of reasonable care could
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1 not have known, of the existence of conduct that is the basis for
2 discipline under this section.

3 I. The Administrator may not institute a proceeding under
4 subsection A, B or C of this section based solely on material facts
5 actually known by the Administrator unless an investigation or the
6 proceeding is instituted within one (1) year after the Administrator
7 actually knew the material facts.

8 J. The Administrator may deny any registration or may revoke,
9 suspend, condition, or limit any registration if the Administrator
10 determines that such applicant or registrant, any member, principal,
11 or director of the applicant or registrant or any person having
12 similar status or performing similar functions, or any person
13 directly or indirectly controlling the applicant or registrant:

14 1. Has been found guilty of a fraudulent act in connection with
15 rendering investment advice or in connection with any sales of
16 securities, has been or is engaged or is about to engage in making
17 fictitious or pretended sales or purchases of any such securities or
18 in any practice involving the rendering of investment advice or the
19 sale of securities which is fraudulent or in violation of the law;
20 or

21 2. Has made a material misrepresentation or false statement to,
22 or concealed any essential or material fact from, any person in the
23 rendering of investment advice or the sale of a security to such
24 person. For the purposes of this paragraph, misrepresentation or

1 false statement to, or concealment of any essential or material fact
2 includes the rendering of investment advice on the primary basis of
3 reasons other than for pecuniary factors.

4 SECTION 2. This act shall become effective November 1, 2023.

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