ENGROSSED HOUSE
BILL NO. 1707

BY: BENSON of the HOUSE

and

BROWN of the SENATE

AN ACT RELATING TO SECURITIES; AMENDING 71 O.S. 1981, SECTIONS 201, AS AMENDED BY SECTION 8, CHAPTER 108, O.S.L. 1988, 401, AS LAST AMENDED BY SECTION 16, CHAPTER 108, O.S.L. 1988, AND SECTIONS 3, 14, 15 AND 23, CHAPTER 157, O.S.L. 1985 (71 O.S. SUPP. 1990, SECTIONS 201, 401, 803, 814, 815 AND 823), WHICH RELATE TO OKLAHOMA SECURITIES ACT AND THE OKLAHOMA BUSINESS OPPORTUNITY SALES ACT; MODIFYING INVESTMENT-ADVISER REGISTRATION REQUIREMENTS; ADDING ADDITIONAL EXEMPTIONS TO REGISTRATION REQUIREMENTS; PROVIDING CONDITIONS FOR EFFECTIVENESS OF REGISTRATION; REQUIRING CERTAIN NOTIFICATION OF ACTIVITIES; PROVIDING FOR ADMINISTRATOR TO PROVIDE BY RULE OR ORDER CERTAIN REGISTRATION REQUIREMENTS; INCLUDING CERTAIN MORTGAGE SECURITY UNDER OKLAHOMA SECURITIES ACT; MODIFYING CERTAIN EXEMPTION PROCEDURE FOR ADMINISTRATOR; REQUIRING CERTAIN ADVANCE NOTICE PRIOR TO EXEMPTION; PROVIDING FOR EXEMPTION FOR SALE OF BUSINESS OPPORTUNITIES NOT CONTRARY TO PUBLIC INTEREST; PROVIDING FOR CERTAIN FINES AND PENALTIES UNDER OKLAHOMA BUSINESS OPPORTUNITY SALES ACT; CHANGING AND MODIFYING PROCEDURES CONCERNING VIOLATIONS OF THE OKLAHOMA BUSINESS OPPORTUNITY

SALES ACT AND PROVIDING FOR CIVIL PENALTIES; MODIFYING PROCEDURES CONCERNING JUDICIAL REVIEW OF ORDERS ISSUED UNDER OKLAHOMA BUSINESS OPPORTUNITY SALES ACT; INCREASING FINES FOR VIOLATIONS UNDER THE OKLAHOMA BUSINESS OPPORTUNITY SALES ACT; REQUIRING APPLICABLE ADMINISTRATIVE PROCEDURES TO APPLY TO PROCEEDING CONDUCTED UNDER OKLAHOMA BUSINESS OPPORTUNITY SALES ACT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 71 O.S. 1981, Section 201, as amended by Section 8, Chapter 108, O.S.L. 1988 (71 O.S. Supp. 1990, Section 201), is amended to read as follows:

Section 201. (a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is so registered under this act.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is so registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Administrator.

(c) (1) It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless ~~(1)~~ he is so registered under this act~~; (2)~~ or

unless he is exempt from registration as provided in paragraph (2) of this subsection.

(2) Subject to paragraph (3) of this subsection, a person shall be exempt from registration as an investment adviser or investment adviser representative if:

(A) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies; ~~or (3)~~

(B) he has no place of business in this state and ~~(A)~~:

(i) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or ~~(B)~~

(ii) during any period of twelve (12) consecutive months he does not direct business communications into this state in any manner to more than five (5) clients other than those specified in ~~subparagraph (A)~~ division (i) of this paragraph, whether or not he or any of the persons to whom the communications are directed is then present in this state~~.~~; or

(C) he is a full-time employee of this state, any county, municipality or school district of this state; or any other political subdivision of this state; or any agency or corporate or other instrumentality of any such political subdivision; and such person's activities as an investment adviser or investment adviser representative are required as part of such person's employment with such entity.

(3) The exemptions from registration provided by subparagraphs (A) and (B) of paragraph (2) of this subsection shall not be

available to any person who acts as an investment adviser or investment adviser representative to this state, any county, municipality or school district of this state, or any other political subdivision of this state; any agency or corporate or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

(4) The registration of an investment adviser representative is not effective during any period when he is not associated with a particular investment adviser registered under this act. When an investment adviser representative begins or terminates a connection with an investment adviser, or begins or terminates those activities which make him an investment adviser representative, the investment adviser representative as well as the investment adviser shall promptly notify the Administrator.

(d) Every registration expires one (1) year from its effective date unless renewed; provided the Administrator may require by rule or order that all registrations and renewals of registrations expire on December 31 of the year of registration or renewal. For this purpose the Administrator may prorate registration or renewal fees accordingly.

~~(e) The Administrator may by rule or order prepare an initial schedule for registration renewals so that subsequent renewals of registrations effective on the effective date of this act may be staggered by calendar months. For this purpose the Administrator may by rule reduce such initial registration fee proportionately. Where financial reports required do not coincide with registration dates, such report for the registrant's preceding fiscal year shall be acceptable.~~

SECTION 2. AMENDATORY 71 O.S. 1981, Section 401, as last amended by Section 16, Chapter 108, O.S.L. 1988 (71 O.S. Supp. 1990, Section 401), is amended to read as follows:

Section 401. (a) The following securities are exempt from Sections 301 and 402 of this title:

(1) Subject to the provisions of the Oklahoma Bond Oversight and Reform Act, any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of said entities, or any certificate of deposit for any of said entities; however, notwithstanding the provisions of Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law 98-440, any security that is offered and sold pursuant to Section 4(5) of the Securities Act of 1933 or that is a mortgage related security as that term is defined in Section 3(a)(41) of the Securities Exchange Act of 1934 shall not be exempt from Sections 301 and 402 of this title; and

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the entities named in this paragraph, or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor; and

(3) Any security issued by and representing an interest in or a debt of or guaranteed by any bank organized pursuant to the laws of the United States, or any bank, savings institution, or trust company organized and supervised pursuant to the laws of any state; and

(4) Any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association, or any building and loan or similar association organized pursuant to the laws of any state and authorized to do business in this state; and

(5) Any security issued by any cooperative, nonprofit, membership corporation or association organized in compliance with the laws of this state; and

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised pursuant to the laws of this state; and

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(A) subject to the jurisdiction of the Interstate Commerce Commission; or

(B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of the Public Utility Holding Company Act of 1935; or

(C) regulated with respect to its rates and charges by a governmental authority of the United States or any state; or

(D) regulated with respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province; and

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association provided the Administrator is provided with a notice at such time and in such form as provided by rule or order; and

(9) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of

grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal; and

(10) Any investment contract or other security offered, sold, issued, distributed or transferred in connection with an employee stock purchase, stock option, savings, pension, thrift, profit-sharing or similar benefit plan or trust (including a self-employed person's retirement plan or trust); provided, that in the case of plans or trusts which are not qualified under Section 401 of the Internal Revenue Code and which provide for contributions by employees, there is filed with the Administrator, prior to any offer or sale in this state a notice specifying the terms of the plan, current financial statements of the issuer and disclosure documents prepared for employees under the plan, and the Administrator does not ~~by order disallow the exemption~~ commence a proceeding to deny the exemption pursuant to subsection (d) of this section within ten (10) full business days; and provided, further, that the Administrator may by rule or order make this exemption available for other similar plans or trusts, including plans or trusts which allow participation by persons other than employees.

(b) The following transactions are exempted from Sections 301 and 402 of this title:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not; and

(2) Any nonissuer transaction in an outstanding security if:

(A) the security is of a class that has been outstanding in the hands of the public for not less than one hundred eighty (180) days before the transaction and a nationally recognized securities manual designated by the Administrator contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen (18) months prior to the transaction and a profit-and-loss statement for either the fiscal year

preceding that date or the most recent year of operations; or

(B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of the principal, interest, or dividends on the security.

The Administrator may impose additional requirements as a condition of the exemption established in this paragraph as necessary for the protection of investors and shall promulgate rules specifying application of this exemption; and

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the Administrator, by rule, may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period; and

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters; and

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit; and

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator; and

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the provisions of the Oklahoma Securities Act; and

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity; and

(9) (A) Any sale by an issuer to not more than fifteen (15) nonaccredited investors wherever located, and to not more than fifty (50) accredited investors wherever located, during any period of twelve (12) consecutive months, if:

(i) the issuer reasonably believes that all purchasers are purchasing for investment;

(ii) no commission is paid or given, directly or indirectly, as consideration for any such solicitation or sale;

(iii) no public advertising or solicitation is used in any such solicitation or sale; and

(iv) in the event a notification or other form is required to be filed with the Securities and Exchange Commission pursuant to Regulation D under the Securities Act of 1933 in connection with such sale, the notification described in any rule adopted pursuant to division (iii) of subparagraph (B) of this paragraph is filed with the Administrator in connection with such sale.

(B) Any sale by an issuer in this state exempted from Section 5 of the Securities Act of 1933 pursuant to Section 4(6) thereof; or by virtue of a rule or regulation adopted by the United States Securities and Exchange Commission

pursuant to Section 4(2) of such act; or pursuant to Rules 501 through 506 of Regulation D adopted by the United States Securities and Exchange Commission (17 C.F.R. 230.501 through 230.506), provided that:

(i) commissions paid or given, directly or indirectly, as consideration for such solicitation or sale be paid or given only to broker-dealers registered pursuant to Section 202 of this title or through said broker-dealers to their agents registered pursuant to Section 202 of this title; provided, persons engaged in such solicitation or sale who are not required by this act to register in this state may be paid or given commissions if such persons are registered with an association of brokers and dealers registered with the United States Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934, as amended; and

(ii) commissions paid or given, directly or indirectly, as consideration for such solicitation or sale not exceed those allowed for securities registered pursuant to the provisions of this act; and

(iii) the issuer files with the Administrator a notice at such time and in such form as is designated by the Administrator by rule.

(C) Any offer made pursuant to subparagraph (A) or (B) of this paragraph in which no sale results from such offer.

(D) The Administrator may make, amend or rescind rules defining terms used in this section insofar as the definitions are not inconsistent with the provisions of this act; and

(10) Any offer or sale of a preorganization certificate or subscription if:

(A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber; and

(B) the number of subscribers does not exceed ten; and

(C) no payment is made by any subscriber; and

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including but not limited to, persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if:

(A) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state; or

(B) the issuer first files a notice specifying the terms of the offer and the Administrator, by order, does not disallow the exemption within the next five (5) full business days; and

(12) Any offer, but not a sale, of a security for which registration statements have been filed pursuant to the provisions of the Oklahoma Securities Act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending pursuant to either the Securities Act of 1933 or the Oklahoma Securities Act; and

(13) Any offer to sell or sale of securities by an industrial foundation organized pursuant to the laws of Oklahoma, provided that the issuer has first been approved by the Oklahoma Industrial Finance Authority as and has been certified by such Authority to the Oklahoma Securities Commission to be an industrial foundation, which approval and certification shall be conclusive as to the nature and purpose of such industrial foundation; and

(14) Any offer to sell or sale of securities issued by any person who is organized and operating not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes or as a chamber of commerce or trade or professional association, if all such transactions are made by members of the issuer who receives no commission or other remuneration paid or given directly or indirectly for any solicitation or sale and provided the Administrator is provided with a notice at such time and in such form as provided by rule or order; and

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

(i) the seller reasonably believes that all buyers are purchasing for investment;

(ii) no commission is paid or given directly or indirectly for the solicitation of any such sale excluding any commission paid or given by and between parties each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals;

(iii) no public advertising or public solicitation is used in any such solicitation or sale; and

(iv) sales are effected only to persons the seller has reasonable cause to believe are capable of evaluating

the risk of the prospective investment and able to bear the economic risk of the investment; but the Administrator, by rule or order, as to any specific transaction, may withdraw or further condition this exemption or decrease the number of sales permitted or waive the conditions in divisions (i), (ii) and (iii), with or without substitution of a limitation on remuneration.

(B) For the purpose of the foregoing transactional exemption, no units by the issuer or associates shall be integrated, however this exemption cannot be combined or used in conjunction with any other transactional exemption; and

(16) Any transaction or series of transactions incident to a class vote by stockholders, pursuant to the articles or certificate of incorporation or the statute applicable to the corporation, on a merger, consolidation, stock-for-stock reorganization, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; and

(17) Any transaction pursuant to an offer to existing security holders of a bank:

(A) which bank, prior to the offer:

(i) owned a majority of the outstanding voting stock of the issuer; or

(ii) was majority-owned by the issuer; or

(B) which offer has the objective of causing, subsequent to the consummation of the transactions contemplated by the offer:

(i) some or all of the outstanding voting stock of the bank to be owned by the issuer; and

(ii) the issuer to be majority-owned by former security holders of the bank;

if no commission is paid or given for soliciting any security holder in this state, and if the issuer files a notice accompanied by any disclosure document to be utilized in connection with such offer, and if the Administrator, by order, does not disallow the exemption within the next ten (10) full business days. The Administrator, by rule or order, as to any security or transaction or any type of security or transaction, may further condition the availability of this exemption; and

(18) A nonissuer transaction in a security by a broker-dealer or agent registered under the provisions of Section 202 of this title if:

(A) (i) the issuer of the security has a class of securities required to be registered pursuant to Section 12 of the Securities Exchange Act of 1934;

(ii) the issuer has filed reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the ninety (90) day period immediately preceding the date of the offer or sale, or is an issuer of a security subject to Section 12(g)(2)(B) or (G) of the Securities Exchange Act of 1934;

(iii) the broker-dealer has a reasonable basis for believing that the issuer is current in filing the regular reports required pursuant to the provisions of either Section 13 or Section 15(d) of the Securities Exchange Act of 1934, or in the case of insurance companies exempted from Section 12(g) of the Securities Exchange Act of 1934 by subparagraph 12(g)(2)(G) thereof, the annual statement referred to in Section 12(g)(2)(G)(i) of the Securities Exchange Act of 1934; and

(iv) the broker-dealer has in its records, and makes reasonably available upon request, the issuer's most recent annual report filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, or the annual statement in the case of an insurance company exempted from Section 12(g) of the Securities Exchange Act of 1934 by subparagraph 12(g)(2)(G) thereof, together with any other reports which the issuer is required to file at regular intervals pursuant to the Securities Exchange Act of 1934 after such annual report or annual statement; provided that the making available of such reports pursuant to this division, unless otherwise represented, shall not constitute a representation by the broker-dealer that the information is true and correct but shall constitute a representation by the broker-dealer that the information is reasonably current; or

(B) the issuer has, for not less than ninety (90) days before the transaction, filed and maintained with the Administrator information in such form as the Administrator by rule specifies, substantially comparable to the information which the issuer would be required to file pursuant to Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 if the issuer were to have a class of its securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, and the issuer has paid a fee as designated by the Administrator by rule; and

(19) A transaction by an issuer in a security effected by or through a broker-dealer or agent registered pursuant to the provisions of Section 202 of this title:

(A) involving a security of the same class as a security of the issuer which is listed or approved for listing upon

notice of issuance on a national securities exchange either registered pursuant to Section 6 of the Securities Exchange Act of 1934 or designated or approved for designation upon notice of issuance as a national market system security by the National Association of Securities Dealers, Inc., provided that such exchange or national market system shall be approved by rule or order of the Administrator; or

(B) involving any security of the same issuer which is of senior or substantially equal rank, or which differs only in terms of voting rights, from the security listed on such exchange or national market system;

(C) any warrant, option or right to purchase or subscribe to any security described in subparagraphs (A) or (B) of this paragraph.

The Administrator may impose by rule or order additional requirements or conditions on the exemptions provided by this paragraph; and

(20) A nonissuer transaction involving a security issued and outstanding and listed or approved for listing upon notice of issuance on a national securities exchange registered pursuant to Section 6 of the Securities Exchange Act of 1934, or designated or approved for designation upon notice of issuance as a national market system security by the National Association of Securities Dealers, Inc., or any warrant, option or right to purchase or subscribe to any such security provided that such exchange or national market system shall be approved by rule or order of the Administrator, subject to any additional requirements or conditions imposed by the Administrator; and

(21) A transaction or type of transaction as to which the Administrator, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.

(c) The Oklahoma Securities Act, except Section 101 and paragraph (2) of subsection (a) of Section 408 of this title, shall not apply to any company defined in or coming within the provisions of Sections 181 through 188, inclusive, of Title 17 of the Oklahoma Statutes, nor to the issuance of any security as defined herein of any such company. The Oklahoma Securities Act shall not repeal or modify the provisions of Section 188 of Title 17 of the Oklahoma Statutes.

(d) The Administrator, by order, may deny or revoke any exemption specified in paragraph (8) or (10) of subsection (a) of this section or in subsection (b) of this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Administrator, by order, may summarily deny or revoke any of the specified exemptions pending final determination of any proceeding pursuant to this subsection. Upon the entry of a summary order, the Administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request, the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order pursuant to this subsection may operate retroactively. No person may be considered to have violated Section 301 or 402 of this title by reason of any offer or sale effected after the entry of an order pursuant to this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(e) In any proceeding pursuant to the provisions of the Oklahoma Securities Act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

SECTION 3. AMENDATORY Section 3, Chapter 157, O.S.L. 1985 (71 O.S. Supp. 1990, Section 803), is amended to read as follows:

Section 803. The following business opportunities are exempt from Sections 6 through 11 of the Oklahoma Business Opportunity Sales Act:

1. Any offer or sale of a business opportunity for which the immediate cash payment made by the purchaser for any business opportunity is at least Twenty-five Thousand Dollars ($25,000.00) if the immediate cash payment does not exceed twenty percent (20%) of the purchaser's net worth as determined exclusive of principal residence, furnishings therein, and automobiles. The Administrator may by rule withdraw or further condition the availability of this exemption.

2. Any offer or sale of a business opportunity for which the purchaser is required to make a payment to the seller or a person recommended by the seller not to exceed Two Hundred Fifty Dollars ($250.00) during the period from any time before commencing operation to within six (6) months after commencing operation of the business opportunity.

3. Any offer or sale of a business opportunity where the seller has a net worth of not less than One Million Dollars ($1,000,000.00) as determined on the basis of the seller's most recent audited financial statements, prepared within thirteen (13) months of the first offer in this state. Net worth may be determined on a consolidated basis where the seller is at least eighty percent (80%) owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of any business opportunity claimed to be exempt under this paragraph. The

Administrator may by rule withdraw or further condition the availability of this exemption.

4. Any offer or sale of a business opportunity where the purchaser has a net worth of not less than Two Hundred Fifty Thousand Dollars ($250,000.00). Net worth shall be determined exclusive of principal residence, furnishings therein, and automobiles. The Administrator may by rule withdraw or further condition the availability of this exemption.

5. Any offer or sale of a business opportunity where the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, investment company as defined by the Investment Company Act of 1940, pension or profit sharing trust or other financial institution or institutional buyer or a dealer registered pursuant to the Oklahoma Securities Act, where the purchaser is acting for itself or in a fiduciary capacity.

6. Any offer or sale of a business opportunity which is defined as a franchise in Section 2 of the Oklahoma Business Opportunity Sales Act provided that the seller delivers to each purchaser at the earlier of the first personal meeting, or ten (10) business days prior to the earlier of the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

a. A Uniform Franchise Offering Circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc., or

b. A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 C.F.R. Section 436.

For the purposes of this paragraph, a personal meeting shall mean a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity. The Administrator may by rule adopt any amendment to the Uniform Franchise Offering Circular that has been adopted by the North American Securities Administrators Association, Inc. or any amendment to the disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 C.F.R. Section 436, that has been adopted by the Federal Trade Commission.

7. Any offer or sale of a business opportunity for which the required cash payment made by a purchaser for any business opportunity does not exceed Five Hundred Dollars ($500.00) and the required payment is made for the not-for-profit sale of sales demonstration equipment, material or samples or the required payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

8. Any offer or sale of a business opportunity which the Administrator exempts by order or a class of business opportunities which the Administrator exempts by rule upon the finding that such exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

9. Any business which is operated under a lease or license on the premises of the lessor or licenser as long as such business is incidental to the business conducted by the lessor or the licenser on such premises, including, without limitation, leased departments, licensed departments and concessions.

SECTION 4. AMENDATORY Section 14, Chapter 157, O.S.L. 1985 (71 O.S. Supp. 1990, Section 814), is amended to read as follows:

Section 814. A. Whenever it appears to the Administrator that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, the Administrator may:

1. Issue an order directing the person to cease and desist from continuing the act or practice~~. Any person named in a cease and desist order issued by the Administrator may, within fifteen (15) days after receipt of said order, file a written request for a hearing with the Administrator. If the Administrator does not receive a written request for a hearing within the time specified, the cease and desist order will be permanent and the person named in the order will be deemed to have waived all rights to a hearing.~~ and/or issue an order imposing a civil penalty up to a maximum of Five Thousand Dollars ($5,000.00) for a single violation or transaction or of Fifty Thousand Dollars ($50,000.00) for multiple violations or transactions in a single proceeding or a series of related proceedings; or

2. ~~Bring~~ Initially or subsequent to an administrative proceeding pursuant to paragraph 1 above, bring an action in the district court of Oklahoma County or the district court in any other county where service can be obtained on one or more of the defendants to enjoin the acts or practices and to enforce compliance with the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets or the court may order rescission, which shall include restitution plus the legal interest rate, for any sales of business opportunities determined to be unlawful pursuant to the Oklahoma Business Opportunity Sales Act or any rule or order

hereunder. The court shall not require the Administrator to post a bond.

B. Except as provided in subsection D of this section or unless the right to notice and hearing is waived by the person against whom the sanction is imposed, the sanctions provided in paragraph 1 of subsection A of this section may be imposed in an administrative proceeding only after notice and hearing as required by the Oklahoma Administrative Procedures Act. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of said notice, a permanent order shall be issued.

C. For purposes of determining any sanction to be imposed under subsection A of this section, the Administrator shall consider, among other factors, the frequency and persistence of the conduct constituting a violation of the Oklahoma Business Opportunity Sales Act or a rule or order of the Administrator under the Oklahoma Business Opportunity Sales Act, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

D. 1. If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing a cease and desist order pursuant to paragraph 1 of subsection A of this section, the Administrator may issue a summary order pending the hearing required by subsection B of this section.

2. Once the summary order is entered, the Administrator shall promptly notify the person subject to the summary order that the summary order was entered, the reason for the entry of the summary order, that the person subject to the order must make written request for hearing to the Administrator within fifteen (15) days after receipt of the notice, and that within fifteen (15) days after receipt of a written request for a hearing the Administrator is required to set a hearing on the summary order as provided in paragraph 3 of this subsection.

3. If the Administrator receives a request for a hearing on the summary order as provided in paragraph 2 of this subsection, the Administrator shall set a date and time for a hearing to commence on the summary order. Such date shall be within fifteen (15) days of the date the request for a hearing is received by the Administrator. The time for commencement of the hearing shall be during the regular business hours of the Department. The hearing may be set at another date and time if the date and time is acceptable to the Administrator and all parties subject to the summary order who requested a hearing pursuant to paragraph 2 of this subsection.

4. The hearing on the matter shall be held to determine whether the summary order should be modified, vacated or become permanent. The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or the designated hearing officer extends the summary order pending a final determination.

5. The summary order shall become permanent without a hearing if the person to whom notice is addressed does not request a hearing as required by paragraph 2 of this subsection. If a request for hearing on the summary order is made as required by paragraph 2 of this subsection, but the hearing is not set to commence and is not commenced by the Administrator as provided in paragraph 3 of this subsection, the summary order shall dissolve and a cease and desist order shall not be issued pursuant to paragraph 1 of subsection A of this section except upon reasonable notice and opportunity for a hearing as provided in subsection B of this section.

SECTION 5. AMENDATORY Section 15, Chapter 157, O.S.L. 1985 (71 O.S. Supp. 1990, Section 815), is amended to read as follows:

Section 815. A. Any person aggrieved by a final order of the Administrator may obtain a review by the Commission by filing with the ~~Administrator~~ Commission at the offices of the Department,

within fifteen (15) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part and stating his ground therefor. ~~The application and petition shall within sixty (60) days be heard de novo by the Oklahoma Securities Commission en banc. The applicant may offer evidence and it shall be the duty of the Administrator to offer such evidence as he relied upon in the entry of his order and such further evidence as he may deem relevant~~ The petition, the record in the administrative hearing, including but not limited to the transcript, and written briefs submitted by the appealing parties and the Administrator shall be reviewed by the Commission. Oral argument by all parties shall be heard by the Commission en banc unless waived by the party. Other than newly discovered evidence, additional evidence may only be presented by the appealing party and/or the Administrator on the request of the Commission. Upon the written request of the party on whose behalf the appeal is brought, or upon his own motion, the Administrator shall cause complete stenographic notes to be taken. If requested by the appealing party, the cost of taking and transcribing such notes shall be borne by the said appealing party. If such notes are taken upon the motion of the Administrator, the cost shall be borne by the ~~Commission~~ Department. The Commission or a majority thereof shall make such order as is deemed proper, just and equitable within sixty (60) days of receipt by the Commission of the written petition of the appealing party or at such later time as agreed to in writing by all parties.

B. Any person aggrieved by a final order of the Oklahoma Securities Commission may obtain a review of the order by the Supreme Court of Oklahoma. The proceedings for review shall be as now prescribed by law and by rules of the reviewing court, subject to the power of the other court to make other and further rules with reference thereto.

C. The commencement of proceedings under this section before the Commission shall not operate as a stay of the Administrator's order, unless so ordered by the Commission. The commencement of proceedings under this section before the Supreme Court shall not operate as a stay of the Commission's order, unless so ordered by the Court.

SECTION 6. AMENDATORY Section 23, Chapter 157, O.S.L. 1985 (71 O.S. Supp. 1990, Section 823), is amended to read as follows:

Section 823. A. Any person who willfully violates Section 6, subsection A of Section 8, subsection A of Section 9, Sections 11, 19, 21 or 22 of the Oklahoma Business Opportunity Sales Act or who willfully violates any rule under the act or who willfully violates any order of which the person has notice, or who violates Section 20 of the Oklahoma Business Opportunity Sales Act knowing that the statement made was false or misleading in any material respect, shall be guilty of a felony and may upon conviction be fined not more than ~~Five Thousand Dollars ($5,000.00)~~ Ten Thousand Dollars ($10,000.00) or imprisoned not more than ~~three (3)~~ ten (10) years or both for each offense. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.

B. The Administrator may refer such evidence as may be available concerning violations of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder to the Attorney General of the State of Oklahoma or the district attorney for the county where a violation occurred, who may, with or without such a reference, institute the appropriate criminal proceedings under the act. The Attorney General or district attorney may designate and appoint one or more lawyers of the Department as special assistants available

for the purpose of assisting in or conducting all criminal prosecutions arising by reason of proceedings under this section.

C. Nothing in the Oklahoma Business Opportunity Sales Act limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 828 of Title 71, unless there is created a duplication in numbering, reads as follows:

All of the administrative procedures applicable to investigations and proceedings conducted pursuant to the Oklahoma Securities Act which are not in conflict with the provisions of this act shall apply to any offer and/or sale of a business opportunity in this state.

SECTION 8. This act shall become effective September 1, 1991.

Passed the House of Representatives the 27th day of February, 1991.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate