

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 3232

By: Benson of the House

and

Taylor of the Senate

COMMITTEE SUBSTITUTE

An Act relating to charitable annuities; enacting the Oklahoma Charitable Gift Annuity Act; defining terms; providing certain issuance of annuity not to constitute transaction of insurance business; requiring notification to Insurance Commissioner; prescribing content of notice; requiring certain publications to contain statement; requiring charitable organizations to provide certain financial statements; stating requirements governing information required to be submitted to Insurance Commissioner; providing for applicability of Oklahoma Open Records Act and Oklahoma Open Meeting Act; authorizing purchase of annuities under certain circumstances; prescribing remedies for violation of act; authorizing demands; providing for penalties; authorizing injunctive relief; providing for effect of violation and impact pursuant to Internal Revenue Code; providing for effect of act upon certain annuities based upon date of issuance; providing issuance of annuities not to constitute certain agreements, contracts or combinations; amending 36 O.S. 1991, Section 110, as last amended by Section 2, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1997, Section 110), which relates to the Oklahoma Insurance Code; modifying excluded provisions; excluding qualified charitable organizations meeting certain criteria; amending 71 O.S. 1991, Section 201, as last amended by Section 3, Chapter 279, O.S.L. 1997 and 401, as last amended by Section 12, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1997, Sections 201 and 401), which relates to registrations and exemptions; modifying exemption; exempting certain annuities; providing for codification; and declaring an emergency.

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 4071 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Charitable Gift Annuity Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4072 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Charitable gift annuity" means a transfer of cash or other property by a donor or donors to a charitable organization in return for periodic payments by the charitable organization commencing on the date of the agreement or in the future to one or more persons designated by the donor or donors over the lives of such persons;

2. "Qualified charitable gift annuity" means a charitable gift annuity which:

- a. has an actuarial value which is less than the value of the cash or other property transferred by the donor or donors to the charitable organization and the difference in value constitutes a charitable deduction for federal tax purposes,
- b. has periodic payments that are calculated using a rate which is no higher than the suggested maximum rate established by the American Council on Gift Annuities, or its successor or similar organization, on the date the annuity is issued, and
- c. is described in Section 501(m)(5) of the Internal Revenue Code (26 U.S.C., Section 501(m)(5));

3. "Charitable organization" means an entity that is described by:

- a. Section 501(c)(3) of the Internal Revenue Code, and
- b. Section 170(c) of the Internal Revenue Code; and

4. "Qualified charitable organization" means a charitable organization that, on the date it issues its first qualified charitable gift annuity contract:

- a. has a minimum of One Hundred Thousand Dollars (\$100,000.00) in unrestricted assets that are exclusive of the assets comprising its qualified charitable gift annuities, and

- b. has been in continuous operation for at least three (3) years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three (3) years.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4073 of Title 36, unless there is created a duplication in numbering, reads as follows:

The issuance of a qualified charitable gift annuity by a qualified charitable organization shall not constitute transacting a business of insurance in this state.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4074 of Title 36, unless there is created a duplication in numbering, reads as follows:

On or before ninety (90) days after the later of the effective date of this act or the date on which it issues its first charitable gift annuity contract, the charitable organization shall notify the Insurance Commissioner in writing that it has issued one or more charitable gift annuities. This notice shall be signed by an officer or director of the charitable organization and shall:

- a. show the name and principal address of the charitable organization,
- b. certify that the organization is an organization described by Section 501(c)(3) of the Internal Revenue Code and Section 170(c) of the Internal Revenue Code,
- c. have attached a copy of the organization's letter from the Internal Revenue Service declaring its exempt status,
- d. certify that the charitable organization has issued one or more charitable gift annuity contracts and that these charitable gift annuity contracts are qualified charitable gift annuity contracts as defined in this act,
- e. certify that the charitable organization has a minimum of One Hundred Thousand Dollars

- (\$100,000.00) in unrestricted assets exclusive of the assets comprising the qualified charitable gift annuities issued by the charitable organization,
- f. certify that the charitable organization has been in continuous operation for at least three (3) years or is a successor or an affiliate of a charitable organization that has been in continuous operation for at least three (3) years, and
 - g. have attached the most recent annual audit of the charitable organization prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4075 of Title 36, unless there is created a duplication in numbering, reads as follows:

In its promotional literature, applications and agreements for qualified charitable gift annuities the qualified charitable organization shall insert the following separate paragraph in print no smaller than that employed in the document generally:

"A charitable gift annuity is not regulated by the Oklahoma Insurance Department and is not protected by a guaranty association affiliated with the Oklahoma Insurance Department".

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4076 of Title 36, unless there is created a duplication in numbering, reads as follows:

Each qualified charitable organization issuing qualified charitable gift annuities shall provide the Insurance Commissioner with a copy of its annual audited financial statement prepared by an independent certified public accountant in accordance with generally accepted accounting principles within ninety (90) days of receipt of the final audit report by the qualified charitable organization.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4077 of Title 36, unless there is created a duplication in numbering, reads as follows:

Except as otherwise required by this act, a qualified charitable organization shall not be required to submit information to the Insurance Commissioner except as necessary to determine any penalties pursuant to Section 10 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4078 of Title 36, unless there is created a duplication in numbering, reads as follows:

Nothing herein shall be construed to subject a charitable organization to the Oklahoma Open Records Act or the Oklahoma Open Meeting Act; provided, however, that the notices required by Section 4 of this act and the audited financial statements required by Section 6 of this act which are in the possession of the Oklahoma Insurance Department shall be deemed a "record" as defined in the Oklahoma Open Records Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4079 of Title 36, unless there is created a duplication in numbering, reads as follows:

A qualified charitable organization may use a portion of the money or property received in exchange for a qualified charitable gift annuity to purchase an annuity upon the life of the annuitant of the qualified charitable gift annuity from an insurance company qualified to transact a business of insurance in this state.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4080 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. If the Insurance Commissioner or an independent hearing examiner finds that a violation of this act has occurred, the Insurance Commissioner shall enforce compliance with this act by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with this act. If the charitable organization fails to comply with the demand within thirty (30) days of receipt of the letter, the charitable organization may be censured by the Insurance Commissioner or may be subject to a civil fine of not less than One Thousand Dollars (\$1,000.00) but not more than Ten Thousand Dollars (\$10,000.00)

until such time as the charitable organization brings itself into compliance with this act.

B. If the Insurance Commissioner or an independent hearing examiner finds that the violation or threatened violation of this act is willful and is substantially injurious to the public, the Commissioner may file an action in district court to prevent, restrain or enjoin such violation or threatened violation.

C. The failure of a charitable organization to comply with the requirements of this act does not prevent a charitable gift annuity from otherwise being a charitable gift annuity under the Internal Revenue Code.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4081 of Title 36, unless there is created a duplication in numbering, reads as follows:

A charitable gift annuity issued before the effective date of this act which does not meet the definition of a qualified charitable gift annuity under this act shall be deemed to be a qualified charitable gift annuity under this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4082 of Title 36, unless there is created a duplication in numbering, reads as follows:

The issuance of a qualified charitable gift annuity by a qualified charitable organization is not an act, agreement, contract, or combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce within this state.

SECTION 13. AMENDATORY 36 O.S. 1991, Section 110, as last amended by Section 2, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1997, Section 110), is amended to read as follows:

Section 110. No provision of the Oklahoma Insurance Code, Section 101 et seq. of this title, shall apply to:

1. Nonprofit hospital service and medical indemnity corporations, except as stated in Sections 601 et seq. and 2601 et seq. of this title;

2. Fraternal benefit societies, except as stated in Section 2701.1 et seq. of this title;

3. Farmers' mutual fire insurance associations, except as stated in Section 2801 et seq. of this title;

4. Mutual benefit associations, except as stated in Section 2401 et seq. of this title;

5. Domestic burial associations;

6. Any domestic association organized subject to the supervision or by the authority of any incorporated Grange Order of Patrons of Husbandry, when the association is formed exclusively for the mutual benefit of the members of such order. Effective January 1, 1982, The Oklahoma State Union of the Farmers' Educational and Cooperative Union of America shall comply with all provisions of the Oklahoma Insurance Code;

7. Trust companies organized pursuant to the provisions of Title 6 of the Oklahoma Statutes except that the title insurance and surety insurance business of such trust companies shall be subject to the Oklahoma Insurance Code;

8. Soliciting agents of mutual insurance corporations or associations, operating only in this state, that issue no stock or other form of security, do not operate for profit, and have none of their funds inure to the benefit of individuals except in the form of less expensive insurance and necessary expenses of operation, if provisions are made in the bylaws of the insurer for the election of any soliciting agents by a majority of the policyholders in the area where the soliciting agent solicits insurance;

9. The Mutual Aid Association of the Church of the Brethren or the Mutual Aid Association of the Mennonite and Brethren in Christ;

10. Incorporated or unincorporated banking associations having been in existence for over fifteen (15) years and consisting of more than seventy-five (75) member banks within this state for issuance of blanket fidelity bonds for banks within this state for each bank's own use, or any nonprofit trust sponsored by such associations' member banks providing employee benefits such

as life, health, accident, disability, pension and retirement benefits for banks, bank holding companies and subsidiaries thereof, the associations' employees and associate members; ~~or~~

11. A religious publication, or subscribers of the publication, when the publication:

- a. is a nonprofit religious organization,
- b. is limited to subscribers who are members of the same denomination or religion,
- c. acts as an organizational clearinghouse for information between subscribers who have financial, physical or medical needs and subscribers with the present ability to pay subscribers with present financial or medical needs,
- d. provides for the financial or medical needs of a subscriber through payments directly from one subscriber to another, and
- e. suggests amounts that subscribers may voluntarily give with no assumption of risk or promise to pay either among the subscribers or between the subscribers and the publication; or

12. Charitable organizations that:

- a. are described in Section 501(c)(3) of the Internal Revenue Code and Section 170(c) of the Internal Revenue Code,
- b. issue qualified charitable gift annuity contracts,
- c. have a minimum of One Hundred Thousand Dollars (\$100,000.00) in unrestricted assets that are exclusive of the assets comprising its qualified charitable gift annuities, and
- d. have been in continuous operation for at least three (3) years or are successors or affiliates of a charitable organization that has been in continuous operation for at least three (3) years,

except as stated in the Oklahoma Charitable Gift Annuity Act.

SECTION 14. AMENDATORY 71 O.S. 1991, Section 201, as last amended by Section 3, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1997, Section 201), is amended to read as follows:

Section 201. (a) (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is so registered under this act or unless the person is exempt from registration as provided in paragraph (2) or (3) of this subsection.

(2) A person shall be exempt from registration as a broker-dealer if the person has no place of business in this state and:

(A) effects transactions in this state exclusively with or through:

(i) the issuers of the securities involved in the transactions,

(ii) other broker-dealers, or

(iii) financial or institutional investors, whether acting for themselves or as trustees;

(B) is licensed under the securities act of a state in which that person maintains a place of business and offers and sells securities in this state to a person who is an existing customer of the broker-dealer and whose principal place of residence is not in this state; or

(C) during any period of twelve (12) consecutive months, does not direct more than fifteen offers and sales in this state to persons other than those specified in division (iii) of subparagraph (A) of paragraph (2) of this subsection, whether or not the offeror or any of the offerees is then present in this state, so long as that person is licensed under the laws of a state in which he or she maintains a place of business.

(3) An individual shall be exempt from registration as an agent if the individual:

(A) is representing a broker-dealer exempt under paragraph (2) of this subsection;

- (B) is representing an issuer in effecting transactions in a security exempted by paragraph (1), (2), (3), (4), (5), (7), ~~or (8)~~, or (9) of Section 401(a) of this title;
- (C) is representing an issuer in effecting transactions exempted by paragraphs (1) through (18), (21) or (22) of Section 401(b) of this title except when:
- (i) a commission is to be paid to such individual, or
 - (ii) such individual is or has been within the past five (5) years subject to the following in connection with a violation of a state or federal securities law or regulation: an order denying, suspending or revoking registration or a cease and desist order of the Administrator; any similar order, judgment, or decree by another state securities agency, the United States Securities and Exchange Commission, or any self-regulatory securities organization; or an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person;
- (D) is representing an issuer in effecting transactions with existing employees, partners, members or directors of the issuer, or a subsidiary or affiliate of the issuer as those terms may be defined by rule or order, if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state; or
- (E) is representing a broker-dealer in effecting in this state only those transactions described in Section 15(h) of the Securities Exchange Act of 1934 and satisfies the conditions set forth in Section 15(h) of the Securities Exchange Act of 1934.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered or is exempt from registration. The registration of an agent is not effective during any period when the agent 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 the person 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 unless registered under this act or unless 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 if:

- (A) the person's only clients in this state are investment companies as defined in and registered under the Investment Company Act of 1940 or insurance companies;
- (B) the person is licensed as an investment adviser under the laws of another state, has no place of business within this state, and the person's only clients in this state are other investment advisers, broker-dealers, or financial or institutional investors, whether acting for themselves or as trustees;
- (C) the person has no place of business located within this state and during any period of twelve (12) consecutive months, has no more than five (5) clients, other than those clients specified in subparagraph (B) of this paragraph, who are residents of this state;
- (D) the person is registered under Section 203 of the Investment Advisers Act of 1940 as an investment adviser or is not registered under Section 203 of the Investment Advisers Act of 1940 because that

person is excepted from the definition of an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; however, such exemption shall not apply to such a person if such person fails or refuses to pay the notice filing fee required by paragraph (5) of subsection (a) of Section 412 of this title and such failure or refusal to pay is not promptly remedied in accordance with this title or an order or other administrative action of the Administrator; or

(E) the person 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 are required as part of such person's employment with such entity and limited to providing advice to such entity.

(3) The exemption from registration provided by subparagraph (B) of paragraph (2) of this subsection shall not be available to any person who acts as an investment adviser 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.

(d) (1) It is unlawful for any person to transact business in this state as an investment adviser representative unless registered under this act or unless he is exempt from registration as provided in paragraph (2) of this subsection. It is unlawful for any person required to be registered as an investment adviser under this act, or any person exempt from registration as an investment adviser under this act, to employ, supervise, be represented by or be associated with an investment adviser representative unless the investment adviser representative is registered under this act or unless the investment adviser

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

(2) A person shall be exempt from registration as an investment adviser representative if he is employed by, supervised by, represents or is associated with an investment adviser required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940, or with an investment adviser who is not registered under Section 203 of the Investment Advisers Act of 1940 because that person is excepted from the definition of an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940 and such investment adviser representative has no place of business located within this state. However, such exemption shall not apply to such a person if his or her affiliated investment adviser fails or refuses to pay the fifty-dollar-fee for investment adviser representatives as required under Section 202.1(a) of this title and such failure or refusal to pay is not promptly remedied in accordance with this title or an order or other administrative action of the Administrator.

(3) The registration of an investment adviser representative is not effective during any period when the person is not associated with a particular investment adviser registered or exempt from registration 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 the person an investment adviser representative, the investment adviser representative as well as the investment adviser shall promptly notify the Administrator.

(e) Every registration or exemption from registration as an investment adviser representative under this section expires on December 31 each year and may be renewed annually upon written application, as specified by the Administrator by rule or order, and payment of the fee set forth in Section 412 of this title without furnishing any further information unless specifically required by the Administrator. Application for renewals must be

made no later than December 31 in each year; otherwise, the requirements for initial registration must be satisfied.

(f) For purposes of this section, "place of business" means a place or office from which the investment adviser or investment adviser representative regularly provides advisory services or otherwise solicits, meets with, or communicates with clients.

SECTION 15. AMENDATORY 71 O.S. 1991, Section 401, as last amended by Section 12, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1997, Section 401), is amended to read as follows:

Section 401. (a) The following securities are exempt from Sections 301, 305.2 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 by virtue of such Secondary Mortgage Market Enhancement Act but may be exempt based upon the availability of the exemptions from registration provided for in this section;

(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;

(3) Any security issued by and representing an interest in or a direct obligation of or guaranteed by a depository institution if the deposit or share accounts of the depository institution are

insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor to an applicable agency authorized by federal law;

(4) Any membership or equity interest in, or any retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative operated as a not for profit membership cooperative under the laws of any state if not traded to the public;

(5) 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 said act; 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;

(6) Any security issued by any person operating not for 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;

(7) 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~~

(8) Any security issued to an employee, officer or director in connection with a stock purchase, option, savings, pension, thrift, profit-sharing or similar benefit plan or trust in each case designed for the participation of such persons; and

(9) Any qualified charitable gift annuity contract issued by a qualified charitable organization pursuant to the Oklahoma Charitable Gift Annuity Act.

(b) The following transactions are exempted from Sections 301, 305.2 and 402 of this title:

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

(2) Any nonissuer transaction in an outstanding security of a class outstanding in the hands of the public for not less than one hundred eighty (180) days preceding the transaction if a nationally recognized securities manual designated by the Administrator by rule or order, or a document filed with the United States Securities and Exchange Commission that is publicly available through that agency's Electronic Data Gathering Retrieval System (EDGAR), contains:

(A) the names of the issuer's officers and directors;

(B) a balance sheet of the issuer as of a date within eighteen (18) months prior to the transaction; and

(C) a profit-and-loss statement for either the fiscal year preceding that date or the most recent year of operations.

The Administrator may impose, by rule or order, additional requirements as a condition of the exemption established in this paragraph as necessary for the protection of investors. In addition, the Administrator may promulgate rules specifying application of this exemption;

(3) Any nonissuer transaction in a security that 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;

(4) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy;

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

(6) Any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or personal property, 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;

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

(8) Any transaction executed by a bona fide secured party without a purpose of evading the provisions of the Oklahoma Securities Act;

(9) An offer or sale to a financial or institutional investor or to a broker-dealer;

(10) (A) Any sale by an issuer to not more than twenty-five purchasers, other than those designated in paragraph (9) of this subsection, wherever located during any period of twelve (12) consecutive months whether or not the offeror or any of the offerees are then present in this state, if:

(i) the issuer reasonably believes that all purchasers, other than those designated in paragraph (9) of this subsection, are purchasing for investment;

(ii) no commission is paid or given directly or indirectly as consideration for any such solicitation or sale, other than for those transactions involving those purchasers

designated in paragraph (9) of this subsection;
and

- (iii) no public advertising or solicitation is used in any such solicitation or sale.

The Administrator may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of purchasers permitted, or waive the conditions in clauses (i), (ii) and/or (iii) of this subparagraph with or without the substitution of a limitation on commissions.

(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 508 of Regulation D adopted by the United States Securities and Exchange Commission (17 C.F.R. 230.501 through 230.508), provided that:

- (i) offering expenses do not exceed those allowed for securities registered pursuant to the provisions of this title, except that such limitation shall not apply to sales of securities effected in reliance on Rule 506 of Regulation D (17 C.F.R. 230.506);
- (ii) no general advertising or general solicitation is used; 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 by rule or order define terms used in this section insofar as the definitions are not inconsistent with the provisions of this act;

(11) 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;
- (B) the number of subscribers does not exceed ten; and
- (C) no payment is made by any subscriber;

(12) Any transaction pursuant to an offer to existing security holders of the issuer 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 ten (10) full business days;

(13) (A) An offer, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

- (i) a registration or offering statement or similar document as required under the Securities Act of 1933 has been filed, but is not effective;
- (ii) a registration statement has been filed under this act, but is not effective; and
- (iii) no stop order of which the offeror is aware has been entered by the Administrator or the United States Securities and Exchange Commission, and no examination or public proceeding which may culminate in that kind of order is known by the offeror to be pending.

(B) An offer, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

- (i) a registration statement has been filed under this act, but is not effective; and

(ii) no stop order of which the offeror is aware has been entered by the Administrator and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending; and

(14) 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 Department of Securities to be an industrial foundation, which approval and certification shall be conclusive as to the nature and purpose of such industrial foundation;

(15) Any offer to sell or sale of securities issued by any person who is operating not for 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 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 a notice is filed with the Administrator at such time and in such form as specified by rule or order;

(16) (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 buyers are then present in this 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;

(17) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, reclassification of securities, or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if:

- (A) the securities to be distributed are registered under the Securities Act of 1933 before the vote by security holders on the transaction; or
- (B) the securities to be distributed are not required to be registered under the Securities Act of 1933,

written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited from such security holders is given to the Administrator at least ten (10) full business days before the vote by security holders on the transaction and the Administrator does not commence a proceeding to deny the exemption within the next ten (10) full business days; however, such notice shall not be required if the sole purpose of the transaction is to change an issuer's domicile solely within the United States;

(18) 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, at least ten (10) full business days prior to the offer, a notice accompanied by any disclosure document to be utilized in connection with such offer, and if the Administrator does not commence a proceeding to deny 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;

(19) A nonissuer transaction by a broker-dealer or agent registered under the provisions of Section 202 of this title in a security of a class outstanding for not less than ninety (90) days

if the issuer or a registered broker-dealer 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 or registered broker-dealer has paid the fee set forth in Section 412 of this title;

(20) A transaction by an issuer:

- (A) involving a security of the same class as a security of the issuer that is 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., provided that such exchange or national market system shall be approved by rule or order of the Administrator;
- (B) involving any security of the same issuer that is of senior or substantially equal rank, or that differs only in terms of voting rights, from the security listed on such exchange or national market system;
or
- (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;

(21) 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

Req. No. 9780Page 23

approved for designation upon notice of issuance as a national market system security by the National Association of Securities Dealers, Inc., or involving any security of the same issuer that is of senior or substantially equal rank, or that differs only in terms of voting rights, from the security listed on such exchange or national market system, 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

(22) 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.

The Administrator may, as to any transaction, waive the conditions of any exemption provided by this subsection.

(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 may issue a final order denying or revoking any exemption specified in paragraph (6) or (8) of subsection (a) of this section or in subsection (b) of this section with respect to a specific security or transaction. Except as provided in subsection (e) of this section or unless the right to notice and hearing is waived by the person against whom the final order is to be issued, no order may be issued under this section without notice and opportunity for 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 final order as provided in this subsection may be issued.

(e) (1) If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing such an order pursuant to subsection (d) of this section, the Administrator, by order, may summarily deny or revoke any of the specified exemptions pending final determination of any proceeding pursuant to subsection (d).

(2) Upon the entry of the summary order, the Administrator shall promptly notify all interested parties:

- (A) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after receipt of the notice;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending final determination of any proceeding pursuant to subsection (d) of this section; and
- (D) that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or his or her designee extends the summary order pending a final determination of any proceeding pursuant to subsection (d) of this section. If no hearing is requested and none is ordered by the Administrator, the summary order will remain in effect until it is modified or vacated by the Administrator or his or her designee. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a final order shall not be issued pursuant to this subsection except upon reasonable notice and opportunity for a hearing. 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 the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

(f) 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.

(g) The Administrator may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under Section 18(b)(1) of the Securities Act of 1933, if he finds that:

(1) the order is in the public interest, and

(2) there is a failure to submit any filing or fee required under this title or by rule or order.

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

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