

SHORT TITLE: Securities; clarifying and correcting language;
modifying provisions relating to service of process. Effective
date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1354

By: Henry

AS INTRODUCED

An Act relating to securities; amending 71 O.S. 1991, Sections 1 and 6, as amended by Sections 1 and 4, Chapter 241, O.S.L. 1992, 204, as last amended by Section 7, Chapter 279, O.S.L. 1997, 302, as amended by Section 11, Chapter 241, O.S.L. 1992, 303, as last amended by Section 8, Chapter 196, O.S.L. 1995, 304, as amended by Section 9, Chapter 196, O.S.L. 1995, 304.1, as amended by Section 13, Chapter 241, O.S.L. 1992, 306 and 406, as last amended by Sections 11 and 16, Chapter 279, O.S.L. 1997, 407, as amended by Section 579, Chapter 133, O.S.L. 1997, 409, as amended by Section 17, Chapter 241, O.S.L. 1992 and 413, as amended by Section 19, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1997, Sections 1, 6, 204, 302, 303, 304, 304.1, 306, 406, 407, 409 and 413), which relate to the regulation of securities; clarifying and correcting statutory references; modifying gender references; requiring Oklahoma Securities Commission to meet bimonthly; modifying conditions for which Administrator of the Commission may deny, suspend, or revoke effectiveness of registration; clarifying conditions under which a person subject to summary order may make written request for hearing; stating effect of pending civil or administrative hearing on when withdrawal from registration becomes

effective and allowing Administrator to institute such proceedings within one year after withdrawal becomes effective; correcting and clarifying language; stating additional sanction which may be imposed for violation of Oklahoma Securities Act; authorizing Administrator to refer certain evidence to United States Attorney; providing for appointment of special assistant to assist in criminal prosecutions arising by reason of investigations; modifying provisions relating to service of process; 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. 1991, Section 1, as amended by Section 1, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1997, Section 1), is amended to read as follows:

Section 1. Sections 1 through ~~16 of this title, Section 7 of this act and Sections~~ 17, 101 through ~~103~~, 102, 201 through 204, 301 through 307, 401 through ~~413~~ 413.1, 501, and 701 through 703 of this title shall be known and may be cited as the Oklahoma Securities Act.

SECTION 2. AMENDATORY 71 O.S. 1991, Section 6, as amended by Section 4, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1997, Section 6), is amended to read as follows:

Section 6. The Oklahoma Securities Commission shall select a ~~chairman~~ chair and is hereby authorized to adopt rules for conducting its proceedings. Any three members shall constitute a quorum for transacting Commission business. The Commission shall

meet ~~monthly~~ bimonthly on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the ~~chairman~~ chair or by any two members. Complete minutes of each meeting shall be kept and filed in the Department of Securities and shall be available for public inspection during reasonable office hours. The Commission shall report annually to the Governor, to the Speaker of the House of Representatives and to the President Pro Tempore of the Senate. The report shall contain the minutes of each meeting held during the year, legislative recommendations, a summary of violations of the Oklahoma Securities Act and action taken thereon, a list of securities registered with the Commission and such other data and information as may be deemed necessary or appropriate. Said report as to the listing of securities shall be supplemented monthly so as to keep reasonably current such list of registered securities. The Commission is hereby authorized to publish such report, and the Administrator may sell copies of such report at such price as is reasonably sufficient to defray the expenses of the Department in preparing, publishing and disseminating the same. Each member of the Commission shall have unrestricted access to all offices and records under the jurisdiction of the Department. The Commission, or a majority thereof, may exercise any power or perform any act authorized for the Administrator under the provisions of the Oklahoma Securities Act.

SECTION 3. AMENDATORY 71 O.S. 1991, Section 204, as last amended by Section 7, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1997, Section 204), is amended to read as follows:

Section 204. (a) The Administrator may issue a final order denying effectiveness to, or suspending or revoking the effectiveness of, any registration or impose any sanction authorized by Section 406 of this title if the Administrator finds that the order is in the public interest and that the applicant or registrant

or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(1) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or willfully failed to comply with any provision of the Oklahoma Securities Act or a predecessor act or any rule or order under this act or a predecessor act;

(3) has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) is the subject of an order of the Administrator denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an order of the Administrator issued pursuant to Section 406 of this title;

(6) is the subject of an order or other adjudication or determination entered within the past five (5) years by the securities administrator of any other state or by the United States Securities and Exchange Commission or by any other governmental securities agency denying, suspending or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative or the substantial equivalent of those terms as defined in the Oklahoma Securities Act, or is the subject of an

order or other adjudication or determination entered within the past five (5) years by the securities administrator of any other state or by the United States Securities and Exchange Commission or by any other governmental securities agency barring the person from association with any other broker-dealer or investment adviser, or is the subject of an order suspending or expelling the person from a national or international securities exchange or national or international securities association, or is the subject of an order or other adjudication or determination of or by the National Association of Securities Dealers, Inc., or any other self-regulatory organization, suspending, canceling, revoking, or barring the person from membership in said organization or barring the person from association with any other member of said organization, or is the subject of a United States Post Office fraud order; but:

- (A) the Administrator may not institute a revocation or suspension proceeding under this subsection more than one (1) year from the date of the order relied on; and
- (B) may not enter an order under this subsection on the basis of an order under another state act unless that order was based on facts which, but for the situs would currently constitute a ground for an order under this section;

(7) is the subject of a cease and desist order entered after notice and opportunity for hearing by the Administrator, the securities agency or administrator of another state, the United States Securities and Exchange Commission or the Commodity Futures Trading Commission;

(8) has engaged in dishonest or unethical practices in the securities business;

(9) is insolvent, either in the sense that liabilities exceed assets or in the sense that the person cannot meet obligations as they mature; but the Administrator may not enter an order against a

broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

(10) is not qualified on the basis of such factors as training, experience and knowledge of the securities business, except as otherwise provided in subsection (c) of this section; or

(11) has willfully violated any rule of a national or international securities exchange or a national or international securities association with respect to any customer or transaction in this state;

(12) has failed to exercise reasonable supervision of its agents if a broker-dealer or a designated principal, or of its investment adviser representatives if an investment adviser to ensure compliance with the Oklahoma Securities Act; or

(13) has failed to pay the proper filing fee; but the Administrator may enter only a denial order under this paragraph, and shall vacate any such order when the deficiency has been corrected.

(b) The Administrator may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the Administrator when the initial registration became effective unless the proceeding is instituted within ninety (90) days following the effective date of registration.

(c) The Administrator's determination that an applicant or registrant lacks qualification under paragraph (10) of subsection (a) of this section is limited by the following provisions:

(1) The Administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer if the broker-dealer is an individual; or an agent of the broker-dealer.

(2) The Administrator may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser if the investment adviser

is an individual or an investment adviser representative of the investment adviser.

(3) The Administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The Administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The Administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent.

(6) The Administrator may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants.

(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 an order pursuant to subsection (a) of this section, the Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(2) Upon the entry of the summary order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative:

(A) that the summary order has been entered and the reasons therefor;

(B) that the person subject to the summary order, if entitled to a hearing under the Administrative Procedures Act and 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 under subsection (a) 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 under subsection (a) 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 subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

(e) If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application.

(f) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a ~~revocation or suspension~~ civil or

administrative proceeding is pending when the application is filed or a civil or administrative proceeding ~~to revoke or suspend or to impose conditions upon the withdrawal~~ is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. ~~If~~ Although no proceeding is pending or instituted within thirty (30) days after the application for withdrawal is filed and withdrawal ~~automatically~~ becomes effective, the Administrator may ~~nevertheless~~ institute a civil or administrative proceeding under ~~paragraph (2)~~ ~~of~~ subsection (a) of this section within one (1) year after withdrawal became effective and enter an order as of the last date on which registration was effective.

(g) Except as provided in paragraph (1) of subsection (d) 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 such notice is addressed does not request a hearing within fifteen (15) days after the receipt of said notice, a final order as provided in subsection (a) of this section may be issued.

SECTION 4. AMENDATORY 71 O.S. 1991, Section 302, as amended by Section 11, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1997, Section 302), is amended to read as follows:

Section 302. (a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under Section 303 of this title:

(1) any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:

(A) there has been no default during the current fiscal year or within the three (3) preceding fiscal years in

the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(B) the issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting principles:

(i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least five percent (5%) of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within thirty (30) days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within ninety (90) days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price); or

(ii) which, if the issuer and any predecessors have not had any security of the type specified in division (i) of this subparagraph outstanding for three full fiscal years, equal at least five percent (5%) of the amount (as measured in division (i) of this subparagraph) of all securities which will be outstanding if all the securities being offered or proposed to be

offered (whether or not they are proposed to be registered or offered in this state) are issued;

(2) any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if:

(A) any security of the same class has ever been registered under this act or a predecessor act; or

(B) the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 305(b) of this title and the consent to service of process required by Section ~~413(g)~~ 413.1(a) of this title:

(1) a statement demonstrating eligibility for registration by notification;

(2) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;

(3) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: ~~his~~ the person's name and address; the amount of securities of the issuer held by ~~him~~ the person as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(4) a description of the security being registered;

(5) the information and documents specified in paragraphs (8), (10), and (12) of Section 304(b) of this title; and

(6) in the case of any registration under Section 302(a)(2) of this title which does not also satisfy the conditions of Section

302(a)(1) of this title, a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement, and a summary of earnings for each of the two (2) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two (2) years.

(c) If no stop order is in effect and no proceeding is pending under Section 306 of this title, a registration statement under this section automatically becomes effective at two o'clock Central Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Administrator determines.

SECTION 5. AMENDATORY 71 O.S. 1991, Section 303, as last amended by Section 8, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1997, Section 303), is amended to read as follows:

Section 303. (a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 305(b) of this title, the consent to service of process required by Section ~~413(g)~~ 413.1(a) of this title, and the fees set forth in Section 412 of this title:

(1) one copy of the registration statement filed with the United States Securities and Exchange Commission and all amendments thereto and two copies of the latest form of prospectus filed under the Securities Act of 1933 as of the date of filing hereunder;

(2) if the Administrator by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or

among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) if the Administrator requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(4) an undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) no stop order is in effect and no proceeding is pending under Section 306 of this title;

(2) the registration statement has been on file with the Administrator for at least ten (10) days; and

(3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the Administrator permits by rule or otherwise and the offering is made within those limitations.

(d) The registrant shall promptly notify the Administrator in writing, which may be by a facsimile transmission, of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of

proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(e) Upon failure to receive the required notification or post-effective amendment with respect to the price amendment, the Administrator may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (d) of this section. The Administrator shall promptly notify the registrant (and promptly confirm by letter, telegram or facsimile transmission when notifying by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of subsection (d) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry.

(f) The Administrator may by rule or otherwise waive either or both of the conditions specified in paragraphs (2) and (3) of subsection (c) of this section.

(g) If the federal registration statement becomes effective before all the conditions in subsections (c) and (d) of this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Administrator of the date when the federal registration statement is expected to become effective, the Administrator shall promptly advise the registrant, at the registrant's expense, whether all the conditions are satisfied and whether the Administrator then contemplates the institution of a proceeding under Section 306 of this title; but this advice by the Administrator does not preclude the institution of such a proceeding at any time.

(h) The Administrator by rule or order may waive or modify the application of a requirement of this section if a provision or an amendment, repeal, or other alteration of the securities registration provisions of the Securities Act of 1933, or the

regulations adopted under that act, render the waiver or modification appropriate for further coordination of state and federal registration.

SECTION 6. AMENDATORY 71 O.S. 1991, Section 304, as amended by Section 9, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1997, Section 304), is amended to read as follows:

Section 304. (a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 305(b) of this title and the consent to service of process required by Section ~~413(g)~~ 413.1(a) of this title, and the fees set forth in Section 412 of this title:

(1) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: name, age, and business experience during the past five (5) years; the amount of securities of the issuer held by the person as of a specified date within thirty (30) days of the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected;

(3) with respect to persons covered by paragraph (2) of this subsection: the remuneration paid during the past twelve (12) months and estimated to be paid during the next fiscal year, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;

(4) with respect to any person owning of record, or beneficially if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in paragraph (2) of this subsection other than ~~his~~ the person's occupation;

(5) with respect to every promoter if the issuer was organized within the past three (3) years: the information specified in paragraph (2) of this subsection, any amount paid to the promoter and option or options extended or other benefits within that period or intended to be paid to the promoter, and the consideration for any such payment;

(6) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such

commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (2), (4), (5), (6), or (8) of this subsection and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;

(11) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him or her, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) such additional information as the Administrator requires by rule or order.

(c) A registration statement under this section becomes effective when the Administrator so orders.

(d) The Administrator shall by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) of this section and other information which is deemed informative to an offeree, under such rules and regulations as adopted by the Administrator, be sent or given to each person to whom an offer is made before or concurrently with:

(1) the first written offer made to the person (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of

an unsold allotment or subscription taken as a participant in the distribution;

(2) the confirmation of any sale made by or for the account of any such person;

(3) payment pursuant to any such sale; or

(4) delivery of the security pursuant to any such sale, whichever first occurs.

SECTION 7. AMENDATORY 71 O.S. 1991, Section 304.1, as amended by Section 13, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1997, Section 304.1), is amended to read as follows:

Section 304.1 (a) In order to encourage capital formation by Oklahoma issuers, and since the Department has the ability to closely monitor issuers maintaining operations solely or primarily in this state, any security may be registered under the provisions of this section if the following conditions are met:

(1) The issuer is formed under the laws of this state.

(2) (A) Both at the time of registration under this section and immediately following termination of an offering made pursuant to this section, the issuer:

(i) maintains its principal office and a majority of its full-time employees in this state; and

(ii) undertakes to continue to maintain its principal offices and a majority of its full-time employees in this state for at least three (3) years from the date of registration hereunder.

(B) Failure to maintain the principal offices and a majority of full-time employees in this state for three (3) years from the date of registration shall not void the registration, but shall subject the issuer to a penalty equal to two hundred percent (200%) of the fee the issuer would have paid to register under Section 302, 303 or 304 of this title.

(3) At least eighty percent (80%) of the net proceeds of the sale of the securities registered hereunder shall be used in this state. As used herein net proceeds shall mean the gross proceeds of the offering less sales commissions and offering expenses.

(4) A prospectus as filed with the Administrator as part of the registration statement shall be delivered to each offeree prior to the purchase or the commitment, written or oral, to purchase the securities.

(b) To register securities under this section, a registration statement including the following shall be filed with the Department:

(1) One copy of the registration statement filed with the United States Securities and Exchange Commission, if any, including all amendments thereto and one copy of the prospectus and all amendments thereto.

(2) One copy of the prospectus which shall be in such form as designated by rule or order of the Administrator.

(3) A copy of the certificate of incorporation and bylaws or partnership or trust agreement or other controlling agreement among securities holders of the issuer currently in effect, certified by the proper official of the issuer.

(4) A copy of any agreements with any underwriter, broker-dealer, or agent concerning the offer or sale of the securities.

(5) The fees set forth in Section 412 of this title.

(6) The consent to service of process required by Section ~~413(g)~~ 413.1(a) of this title.

(7) Any other documents requested by the Administrator.

SECTION 8. AMENDATORY 71 O.S. 1991, Section 306, as last amended by Section 11, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1997, Section 306), is amended to read as follows:

Section 306. (a) The Administrator may issue a stop order denying effectiveness to, or suspending or revoking the

effectiveness of, any registration statement if the Administrator finds that:

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

(2) (A) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any report under Section 305(i) of this title is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) any provision of the Oklahoma Securities Act or any rule, order, or condition lawfully imposed under said act has been willfully violated, in connection with the offering, by:

(i) the person filing the registration statement,

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or

(iii) any underwriter;

(C) the security registered or sought to be registered is the subject of any administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; provided, however:

(i) the Administrator may not institute a proceeding against an effective registration statement under

this subparagraph more than one (1) year from the date of the order or injunction relied on, and
(ii) may not enter an order under this subparagraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(E) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(F) the offering has been or would be made or is being made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options, profits, compensation, or remuneration paid directly or indirectly to any officer, director, employee, contractor or agent;

(G) when a security is sought to be registered by notification, it is not eligible for such registration;

(H) when a security is sought to be registered by coordination there has been a failure to comply with the undertaking required by Section 303(b)(4) of this title; or

(I) an order has been issued by a court of competent jurisdiction under subsection (e) of this section or Section 406 of this title against the issuer of any

security registered or sought to be registered under the Oklahoma Securities Act.

The Administrator may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to the Administrator when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.

(b) (1) If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing an order pursuant to subsection (a) of this section, the Administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section.

(2) Upon the entry of the summary order, the Administrator shall promptly notify each person specified in paragraph (1) of subsection (c) of this section:

- (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 under subsection (a) 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 ~~a~~ his or her designee extends the summary order pending a final determination of any proceeding under subsection (a) 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 subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

(c) Except as provided in paragraph (1) of subsection (b) of this section or unless the right to notice and hearing is waived by the person against whom the stop order is 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 subsection (a) of this section may be issued.

(d) The Administrator may vacate or modify a stop order if the Administrator finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

(e) The Administrator may apply to the district court of Oklahoma County or the district court of any other county where service can be obtained for an order appointing a conservator of, and directing the conservator to rehabilitate, any issuer upon one or more of the following grounds. That the issuer:

(1) is impaired or insolvent, or is in imminent danger of becoming impaired or insolvent;

(2) has ceased transacting business for a period of one (1) year;

(3) is insolvent and has commenced voluntary liquidation or dissolution, or is attempting to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator;

(4) has refused to comply with any lawful order of the Administrator;

(5) has refused to submit its books, records and accounts relating to its financial affairs to reasonable examination by the Administrator;

(6) has transferred or attempted to transfer substantially its entire property or business, to the detriment of its stockholders; or

(7) has willfully violated its charter or any law of this state.

The conservator may, if all reasonable efforts to rehabilitate the issuer fail, apply to the court for any order directing liquidation and dissolution of any such ~~insurer~~ issuer.

SECTION 9. AMENDATORY 71 O.S. 1991, Section 406, as last amended by Section 16, Chapter 279, O.S.L. 1997 (71 O.S. Supp. 1997, Section 406), is amended to read as follows:

Section 406. (a) If the Administrator reasonably believes, whether or not based upon an investigation conducted under Section 405 of this title, that a person has violated the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or has engaged in dishonest or unethical practices in the securities business, the Administrator, in addition to any specific power granted by any other section of the Oklahoma Securities Act, may impose one or more of the following sanctions:

(1) issue an order against the person to cease and desist from engaging in such violation or dishonest or unethical practices or doing any act in furtherance thereof;

(2) censure the person, if the person is a registered broker-dealer, agent, investment adviser, or investment adviser representative;

(3) bar or suspend the person from association with a broker-dealer or investment adviser subject to the provisions of the Oklahoma Securities Act; ~~or~~

(4) place limitations on the activities, functions, or operations of the person; or

(5) issue an order against a person who willfully violates the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act, 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.

(b) 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 sanction is imposed, the sanctions provided in subsection (a) of this section may be imposed 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 notice, a final order may be issued.

(c) Imposition of the sanctions under this section is limited as follows:

(1) If the Administrator revokes the effectiveness of the registration of a broker-dealer, agent, investment adviser or investment adviser representative under Section 204 of this title or bars a person from association with a broker-dealer or investment

adviser under this section or Section 204 of this title, the imposition of that sanction precludes imposition of the sanction specified in paragraph (4) of subsection (a) of this section; and

(2) The imposition by the Administrator of one or more sanctions under subsection (a) of this section with respect to a specific violation or transaction precludes the Administrator from later imposing any other sanctions under paragraphs (1) through (4) of subsection (a) of this section with respect to the violation or transaction. The Administrator however is not precluded from bringing an action under Section 406.1 of this title in addition to the imposition of one or more sanctions under subsection (a) of this section with respect to the violation or transaction.

(d) For purposes of determining any sanction to be imposed under paragraphs (1) through (4) of 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 Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or involving dishonest or unethical practices in the securities business, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

(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 a cease and desist order pursuant to paragraph (1) of subsection (a) of this section, the Administrator may issue a summary order to cease and desist pending final determination of any proceeding under this section.

(2) Upon the entry of the summary order, the Administrator shall promptly notify the person subject to the summary order :

(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 under paragraph (1) of subsection (a) 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 under paragraph (1) of subsection (a) 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. 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 paragraph (1) of subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

SECTION 10. AMENDATORY 71 O.S. 1991, Section 407, as amended by Section 579, Chapter 133, O.S.L. 1997 (71 O.S. Supp. 1997, Section 407), is amended to read as follows:

Section 407. (a) Any person who willfully violates any provision of this act except Section 403 of this title, or who willfully violates any rule or order under this act, or who willfully violates Section 403 of this title knowing the statement

made to be false or misleading in any material respect, shall be guilty of a felony, upon conviction. The fine for such violation shall not be more than Ten Thousand Dollars (\$10,000.00).

(b) The Administrator may refer such evidence as is available concerning violations of this act or of 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 ~~and the~~ or the United States Attorney for the district where a violation occurred. The Attorney General or the district attorney as the case may be may institute or cause to be filed an information or indictment for violation of the provisions of this act. The Attorney General or district attorney may designate and appoint one or more lawyers of the Department as special assistants as available for the purpose of assisting in or conducting all criminal prosecutions arising by reason of investigations or proceedings under this section.

(c) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statutes.

SECTION 11. AMENDATORY 71 O.S. 1991, Section 409, as amended by Section 17, Chapter 241, O.S.L. 1992 (71 O.S. Supp. 1997, Section 409), is amended to read as follows:

Section 409. (a) Any person aggrieved by final order of the Administrator may obtain a review by the Commission by filing with the Administrator, 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~~ the person's specific grounds therefor. 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. The costs of preparing the record of the administrative hearing shall be borne by the appealing parties. Oral argument by all parties shall be heard by the Commission en banc unless waived by the party. ~~Other than newly~~

~~discovered evidence, additional~~ 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~~ the party's own motion, the Administrator shall cause complete stenographic notes to be taken of the proceeding before the Commission. 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 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 Administrator of the written petition of the appealing party or at such later time as agreed to by all parties.

(b) Any person aggrieved by a final order of the Commission, except a final order of the Commission to cease and desist as provided for in paragraph (1) of subsection (a) of Section 406 of this title, may obtain a review of the order by the Supreme Court of Oklahoma. Any person aggrieved by a final order of the Commission to cease and desist as provided for in paragraph (1) of subsection (a) of Section 406 of this title may obtain a review of the final order by filing a petition in the district court of Oklahoma County within thirty (30) days after the person is notified of the order. The proceedings for review shall be as now prescribed by law and by rules of the reviewing court, subject to the power of the reviewing 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 12. AMENDATORY 71 O.S. 1991, Section 413, as amended by Section 19, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1997, Section 413), is amended to read as follows:

Section 413. (a) Sections 101, 201(a), 301, 404 and 408 of this title apply to persons who sell or offer to sell when:

- (1) an offer to sell is made in this state; or
- (2) an offer to buy is made and accepted in this state.

(b) Sections 101, 201(a), 404 and 408 of this title apply to persons who buy or offer to buy when:

- (1) an offer to buy is made in this state; or
- (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

- (1) originates from this state; or
- (2) is directed by the offeror to this state and received at

the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:

- (1) is communicated to the offeror in this state; and
- (2) has not previously been communicated to the offeror, orally

or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when:

(1) the publisher circulates or there is circulated on ~~his~~ the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not

published in this state, or which is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months; or

(2) a radio or television program originating outside this state is received in this state.

(f) Sections 102 and 201(c), as well as Section 404 of this title so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

~~(g) Every applicant for registration under this act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless:~~

~~(1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at his last address on file with the Administrator; and~~

~~(2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.~~

~~(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and has not filed a consent to service of process under subsection (g) of this section, that conduct shall be considered equivalent to appointment of the Administrator or the Administrator's successor in office to be that person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against that person or a successor executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Administrator, and it is not effective unless:~~

~~(1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by the Administrator, forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at his last-known address or takes other steps which are reasonably calculated to give actual notice; and~~

~~(2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.~~

~~(i) Service by mail shall be effective on the date of receipt or if refused, on the date of refusal by the defendant or respondent. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older shall constitute acceptance or refusal by the party addressed. Acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or~~

~~principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail.~~

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 413.1 of Title 71, unless there is created a duplication in numbering, reads as follows:

(a) Every applicant for registration under this act and every issuer that proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as the Administrator by rule prescribes, an irrevocable consent appointing the Administrator or the Administrator's successor in office to be the applicant's or issuer's attorney to receive service of any lawful process in any civil or administrative proceeding against the applicant's or issuer's or his or her successor executor or administrator that arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another.

(b) When any person, including any nonresident of this state, engages in conduct that is within the scope of this act or any rule or order hereunder, and has not filed a consent to serve of process under subsection (a) of this section, that conduct shall be considered equivalent to the person's appointment of the Administrator or the Administrator's successor in office to be that person's attorney to receive service of any lawful process in any civil or administrative proceeding against that person or a successor executor or administrator which grows out of that conduct and that is brought under this act or any rule or order hereunder, with the same force and validity as if served on the person personally. Any civil or administrative proceeding against a nonresident of this state may be instituted or commenced in any

county in this state in which the nonresident person engages in conduct that is within the scope of this act or any rule or order hereunder, or any county in which the plaintiff, who may be the Administrator, may reside.

(c) Service of process pursuant to subsections (a) and (b) of this section may be made by leaving a copy of the process in the office of the Administrator, and it is not effective unless:

(1) The plaintiff in a civil proceeding sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee, to the defendant at his or her last-known address on file with the Administrator or if no address is on file with the Administrator, at any address known by or disclosed to the plaintiff, and the plaintiff's affidavit of compliance with this subsection is filed with the court on or before the return day of the process, if any, or within such further time as the court allows. If no address to which process may be mailed is known or disclosed to the Administrator or plaintiff, the affidavit shall so state; or

(2) The Administrator in a civil or administrative proceeding instituted by the Administrator sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at his or her last-known address on file with the Administrator or if no address is on file with the Administrator, at any address known by or disclosed to the Administrator, and the Administrator's affidavit of compliance with this subsection is filed with the Administrator in an administrative proceeding or with the court in a civil proceeding, on or before the return day of the process, if any, or within such further time as the Administrator or court allows. If no address to which process may be mailed is known or disclosed to the Administrator, the affidavit shall so state.

(d) Service by mail shall be effective on the date of receipt by the defendant or respondent or if refused, on the date of refusal by the defendant or respondent. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older shall constitute acceptance or refusal by the party addressed. Acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail.

(e) Refusal by any person to accept delivery of the certified mail provided for in this section, or the refusal to sign the return receipt, or the lack of knowledge of the Administrator of any address to which process may have been mailed shall not in any manner affect the legality of the service, and the person shall be presumed to have had knowledge of the contents of the process.

SECTION 14. This act shall become effective November 1, 1998.

46-2-2495

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