

SHORT TITLE: Securities; modifying summary order procedures and provisions relating to Oklahoma Securities Act and Oklahoma Business Opportunity Sales Act; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 303

By: Henry

AS INTRODUCED

An Act relating to securities; amending 71 O.S. 1991, Sections 204 and 306, as last amended by Sections 7 and 11, Chapter 196, O.S.L. 1995, 406, as amended by Section 16, Chapter 196, O.S.L. 1995, 802 and 803, as amended by Sections 1 and 2, Chapter 169, O.S.L. 1992, 804, 807, 810, 814 and 817, as amended by Sections 4, 5 and 7, Chapter 169, O.S.L. 1992, and 818 (71 O.S. Supp. 1996, Sections 204, 306, 406, 802, 803, 810, 814 and 817), which relate to sanctions relating to registrations, to violations of the Oklahoma Securities Act, and to business opportunity sales; modifying summary order procedures; requiring generally accepted accounting principles and standards be applied to certain audits; modifying certain exemption; adding causes for denying or revoking exemptions from Oklahoma Business Opportunity Sales Act; modifying notification provisions relating to summary hearing; modifying registration procedures; requiring certain fees be deposited in General Revenue Fund; making information obtained during investigation confidential and providing for release under limited circumstances; requiring certain fee be deposited in certain revolving fund; modifying service of process procedure; and providing an effective date.

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

SECTION 1. AMENDATORY 71 O.S. 1991, Section 204, as last amended by Section 7, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, Section 204), is amended to read as follows:

Section 204. (a) The Administrator of the Oklahoma Department of Securities may by order deny, suspend, or revoke 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 ~~this act~~ 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 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 ~~this act~~ 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 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 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 ~~him~~ 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, ~~that:~~

- (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 ~~such~~ a hearing to the Administrator within fifteen (15) days after receipt of the notice; ~~and~~
- (C) that within fifteen (15) days after receipt by the Administrator of a written request ~~for a hearing from the person or at such earlier time during regular business hours of the Department as mutually agreed upon by the Department and the person, a~~ the matter will be set for hearing ~~on the matter shall be commenced~~ to determine whether the summary order should be modified, vacated or become a permanent order as provided in 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 designated hearing officer extends the summary order pending a final determination of a permanent order as provided in subsection (a) of this section. The summary order shall become a permanent order if the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of

notice. 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 permanent 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 proceeding is pending when the application is filed or a 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 no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a 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) No order may be entered under any part of this section except under paragraph 1 of subsection (d) of this section without:

- (1) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative);
- (2) opportunity for hearing; and
- (3) written findings of fact and conclusions of law.

SECTION 2. AMENDATORY 71 O.S. 1991, Section 306, as last amended by Section 11, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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 ~~that~~:

- (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 ~~such~~ a hearing to the Administrator within fifteen (15) days after receipt of the notice; ~~and~~

- (C) that within fifteen (15) days after receipt by the Administrator of a written request for a hearing from said person or at such earlier time during regular business hours of the Department as mutually agreed upon by the Department and said person, a hearing on the matter shall be commenced set for hearing to determine whether the summary order should be modified, vacated or become a permanent order as provided in 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 designated hearing officer extends the summary order pending a final determination of a permanent order as provided in subsection (a) of this section. The summary order shall become a permanent order if the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of notice. If a request for hearing on the summary order is timely made and if ~~said~~ the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a permanent order shall not be issued pursuant to subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

(c) No stop order may be entered under any part of this section except under paragraph (1) of subsection (b) of this section without:

- (1) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered,
- (2) opportunity for hearing, and
- (3) written findings of fact and conclusions of law.

(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 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.

SECTION 3. AMENDATORY 71 O.S. 1991, Section 406, as amended by Section 16, Chapter 196, O.S.L. 1995 (71 O.S. Supp. 1996, 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 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) 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 in an administrative proceeding only after notice and hearing as required by the Oklahoma

Administrative Procedures Act. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of ~~said~~ notice, a permanent order shall be issued.

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

(1) If the Administrator revokes 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 ~~that:~~

- (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 ~~such~~ a hearing to the Administrator within fifteen (15) days after receipt of the notice; ~~and~~
- (C) that within fifteen (15) days after receipt by the Administrator of a written request ~~for a hearing from the person or at such earlier time during regular business hours of the Department as mutually agreed upon by the Department and the person, a~~ that matter will be set for hearing on the matter shall be ~~commenced~~ to determine whether the summary order should be modified, vacated or become a permanent order as provided in 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~~ a designated hearing officer extends the summary order pending a final determination of a permanent order as provided in paragraph (1) of subsection (a) of this section. The summary order shall become a permanent order if the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of notice. 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 permanent 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 4. AMENDATORY 71 O.S. 1991, Section 802, as amended by Section 1, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 802), is amended to read as follows:

Section 802. As used in the Oklahoma Business Opportunity Sales Act, Section 801 et seq. of this title, unless otherwise provided:

1. "Administrator" means the Administrator of the Oklahoma Department of Securities.

2. "Advertising" means any circular, prospectus, advertisement or other material or any communication by radio, television, newspapers, magazines, pictures or similar means used in connection with an offer or sale of any business opportunity.

3. a. "Business opportunity" means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, wherein it is agreed that the seller or a person recommended by the seller shall provide to the purchaser any products, equipment, supplies or services enabling the purchaser to start a business and the seller represents directly or indirectly, orally or in writing, that:

(1) The seller or a person recommended by the seller will provide or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, on premises neither owned nor leased by the purchaser or seller; or

(2) The seller or a person recommended by the seller will provide or assist the purchaser in finding

outlets or accounts for the purchaser's products or services; or

- (3) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser; or
- (4) The seller guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller; or
- (5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business; or
- (6) The seller will provide a marketing plan.

b. "Business opportunity" does not include:

- (1) Any offer or sale of an on-going business operated by the seller and to be sold in its entirety; or
- (2) Any offer or sale of a business opportunity to an on-going business where the seller will provide products, equipment, supplies or services which are substantially similar to the products, equipment, supplies or services sold by the purchaser in connection with the purchaser's on-going business; or
- (3) Any offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth

of One Million Dollars (\$1,000,000.00) as determined on the basis of the seller's most recent audited financial statements prepared within thirteen (13) months of ~~such~~ an offer or sale in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards. Net worth may be determined on a consolidated basis where the seller is at least eighty percent (80%) owned by one person and that person expressly guarantees the obligation of the seller with regard to the offer or sale of any business opportunity claimed to be excluded under this division; or

- (4) Any offer or sale of a business opportunity by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator or a judicial offer or sale of a business opportunity.

4. "Department" means the Oklahoma Department of Securities.

5. "Franchise" means a contract or agreement between a seller and a purchaser, express or implied, orally or in writing, where it is agreed that:

- a. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor; and
- b. The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate.

For the purposes of this paragraph, "franchisee" shall mean a person to whom a franchise is granted and "franchisor" shall mean a person who grants a franchise.

6. "Marketing plan" means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies or services and the advice or training includes, but is not limited to, preparing or providing:

- a. Promotional literature, brochures, pamphlets or advertising materials;
- b. Training regarding the promotion, operation or management of the business opportunity; or
- c. Operational, managerial, technical or financial guidelines or assistance.

7. "Offer" or "offer to sell" includes every attempt to dispose of a business opportunity for value or solicitation of an offer to purchase a business opportunity.

8. "On-going business" means an existing business that, for at least six (6) months prior to the offer, has been operated from a specific location, has been open for business to the general public and has substantially all of the equipment and supplies necessary for operating the business.

9. "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association or any other entity.

10. "Purchaser" means a person who enters into a contract or agreement for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

11. "Sale" or "sell" includes every contract or agreement of sale, contract to sell, disposition of a business opportunity or interest in a business opportunity for value.

12. "Seller" means a person who sells or offers to sell a business opportunity or any agent or person who directly or indirectly acts on behalf of such person.

SECTION 5. AMENDATORY 71 O.S. 1991, Section 803, as amended by Section 2, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 803), is amended to read as follows:

Section 803. The following business opportunities are exempt from Sections 806 through 811 of this title:

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

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

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

claimed to be exempt under this paragraph. The Administrator may by rule withdraw or further condition the availability of this exemption.

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

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

6. Any offer or sale of a ~~business opportunity which is defined as a franchise~~ as defined in Section 802 of this title provided that the seller delivers to each purchaser at the earlier of the first personal meeting, or ten (10) business days prior to the earlier of the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

- a. A Uniform Franchise Offering Circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc.,  
or
- b. A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements

and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 C.F.R. Section 436.

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

7. Any offer or sale of a business opportunity for which the required cash payment made by a purchaser ~~for~~ to participate in any business opportunity does not exceed Five Hundred Dollars (\$500.00) and the required payment is made for:

a. the not-for-profit sale of sales demonstration equipment, material or samples, and/or ~~the required payment is made for~~

b. product inventory sold to the purchaser at a bona fide wholesale price.

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

9. Any business which is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or the licensor

on such premises, including, without limitation, leased departments, licensed departments and concessions.

SECTION 6. AMENDATORY 71 O.S. 1991, Section 804, is amended to read as follows:

Section 804. A. The Administrator may by order deny or revoke any exemption specified in Section ~~3~~ 803 of this title, not including the exemption provided for in paragraphs 2 and 7 of Section ~~3~~ 803 of the Oklahoma Business Opportunity Sales Act, with respect to a particular offering of one or more business opportunities if the Administrator finds that the order is in the public interest and that:

1. Any provision of the Oklahoma Business Opportunity Sales Act or any rule, order or condition lawfully imposed pursuant to the act has been willfully violated, in connection with the sale of the business opportunity by the seller, any partner, officer or director of the seller, any persons occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller;

2. The business opportunity is the subject of an administrative order denying, suspending, or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction; but the Administrator:

- a. may not institute a proceeding pursuant to this paragraph more than one (1) year from the date of the order or injunction relied on, and
- b. may not enter an order pursuant to this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts, other than facts which establish jurisdiction, which would currently constitute a ground for an order under this section;

3. The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed;

4. The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would so operate;

5. The seller's literature or advertising is misleading, incorrect, incomplete or deceptive.

No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.

B. If the public interest or the protection of purchasers so requires, the Administrator may by order summarily deny or revoke any of the specified exemptions, not including the exemption provided for in paragraphs 2 and 7 of Section ~~3~~ 803 of this ~~act~~ title, pending final determination of any proceeding under this section. Upon the entry of the summary order, the Administrator shall promptly notify all interested parties ~~that~~:

1. That the summary order has been entered and ~~of~~ the reasons therefor ~~and that~~;

2. 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;

3. That within fifteen (15) days ~~of the~~ after receipt by the ~~Department~~ Administrator of a written request the matter will be set ~~down~~ for hearing to determine whether the summary order should be modified, vacated, or become a permanent order as provided in subsection A of this section; and

4. That a hearing shall be commenced within fifteen (15) days of the matter being set for hearing. ~~Said request for hearing shall be made within fifteen (15) days of receipt of the notice of entry of the summary order.~~ If no hearing is requested in the time

specified and none is ordered by the Administrator, the summary order will become permanent in effect unless it is modified or vacated by the Administrator.

C. No order under this section may operate retroactively.

D. No person may be considered to have violated Section ~~6~~ 806 of the Oklahoma Business Opportunity Sales Act by reason of any offer or sale effected after the entry of an order under Section 4 804 of the Oklahoma Business Opportunity Sales Act if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

SECTION 7. AMENDATORY 71 O.S. 1991, Section 807, is amended to read as follows:

Section 807. A. In order to register a business opportunity, the seller shall file with the Administrator one of the following disclosure documents with the appropriate cover sheet as required by Section 808 of this title, a consent to service of process as specified in subsection B of this section ~~and~~, the appropriate fee as required by subsection C of this section, and any other information determined by the Administrator to be necessary:

1. A Uniform Franchise Offering Circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc. The Administrator may by rule adopt any amendment to the Uniform Franchise Offering Circular that has been adopted by the North American Securities Administrators Association, Inc.;

2. A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures; 16 C.F.R. Section 436. The Administrator may by rule adopt any amendment to the disclosure document prepared pursuant to 16 C.F.R. Section 436 that has been adopted by the Federal Trade Commission; or

3. A disclosure document prepared pursuant to Section 808 of this title.

B. Every seller shall file, in the form as the Administrator may prescribe, an irrevocable consent appointing the Administrator or the successor in office to be the seller's agent to receive service of any lawful process in any noncriminal suit, action or proceeding against the seller or the seller's successor, executor or administrator which arises under the Oklahoma Business Opportunity Sales Act after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the Administrator, but is not effective unless the plaintiff, who may be the Administrator in a suit, action or proceeding, forthwith sends notice of the service and a copy of the process by registered mail to the defendant's or respondent's last address on file with the Administrator, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

C. The seller shall pay a filing fee in the amount of Two Hundred Fifty Dollars (\$250.00) which shall be deposited in the General Revenue Fund of the State Treasury. No additional fee shall be imposed by rule.

D. A registration automatically becomes effective upon the expiration of ~~ten (10)~~ fifteen (15) full business days after a complete filing, provided that no order has been issued or that no proceeding is pending pursuant to Section 810 of this title. The Administrator may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The Administrator may by order defer the effective date until the expiration of ~~ten (10)~~ fifteen (15) full business days after the filing of any amendment. For purposes of this subsection, a filing

shall be deemed complete upon receipt by the Administrator of the items described in subsections A through C of this section.

E. The registration is effective for one (1) year commencing on the day of effectiveness and may be renewed annually upon the filing of a current disclosure document accompanied by any documents or information that the Administrator may by rule or order require. A renewal fee in the amount of One Hundred Fifty Dollars (\$150.00) shall accompany each request for renewal. The renewal fee shall be deposited in the General Revenue Fund of the State Treasury.

Failure to renew upon the close of the one-year period of effectiveness will result in expiration of the registration. The Administrator may by rule or order require the filing of a sales report and payment of a report filing fee in the amount of Ten Dollars (\$10.00) which shall be deposited in the General Revenue Fund of the State Treasury.

F. The Administrator may by rule or order require the filing of all proposed literature or advertising prior to its use and payment of a review and approval fee in the amount of Twenty-five Dollars (\$25.00) for each sales literature or advertising package. The fee shall be deposited in the Oklahoma Department of Securities Revolving Fund.

SECTION 8. AMENDATORY 71 O.S. 1991, Section 810, as amended by Section 4, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 810), is amended to read as follows:

Section 810. A. The Administrator may issue an order denying effectiveness to, or suspending or revoking effectiveness of, any registration if the Administrator finds that the order is in the public interest and that:

1. The registration as of its effective date or as of any earlier date in the case of any order denying effectiveness, or any amendment as of its effective date, or any report 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;

2. Any provision of the Oklahoma Business Opportunity Sales Act or any rule, order or condition lawfully imposed pursuant to the act has been willfully violated, in connection with the business opportunity:

- a. by the person filing the registration, or
- b. by the seller, any partner, officer or director of the seller, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller, but only if the person filing the registration is directly or indirectly controlled by or acting for the seller;

3. The business opportunity registered or sought to be registered is the subject of an administrative order denying, suspending or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction; but the Administrator:

- a. may not institute a proceeding against an effective registration pursuant to this paragraph more than one (1) year from the date of the order or injunction relied on, and
- b. may not enter an order pursuant to this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts, other than facts which establish jurisdiction, which would currently constitute a ground for an order under this section;

4. The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed;

5. The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would so operate;

6. There has been a failure to file any documents or information required by Section 807 of this title;

7. The seller has failed to pay the proper filing fee but the Administrator may enter only a denial order under this paragraph and the Administrator shall vacate any such order when the deficiency has been corrected; or

8. The seller's literature or advertising is misleading, incorrect, incomplete or deceptive.

B. The Administrator may not institute a proceeding under this section against an effective registration on the basis of a fact or transaction known to the Administrator when the registration became effective unless the proceeding is instituted within thirty (30) days from the date the registration became effective.

C. 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 pending final determination of any proceeding under this section.

2. Upon the entry of the summary order, the Administrator shall promptly notify the seller ~~that~~:

- 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 ~~such~~ a hearing to the Administrator within fifteen (15) days after receipt of the notice, ~~and~~
- c. that within fifteen (15) days after receipt by the Administrator of a written request ~~for a hearing from~~

~~said person or at such earlier time during regular business hours of the Department as mutually agreed upon by the Department and said person, a~~ the matter will be set for hearing on the matter shall be commenced to determine whether the summary order should be modified, vacated or become a permanent order as provided in subsection A of this section~~, L~~ 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 designated hearing officer extends the summary order pending a final determination of a permanent order as provided in subsection A of this section. The summary order shall become a permanent order if the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of notice. If a request for hearing on the summary order is timely made and if said hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a permanent order shall not be issued pursuant to subsection A of this section, except upon reasonable notice and opportunity for a hearing.

D. No stop order may be entered under any part of this section, except under paragraph 1 of subsection C of this section, without appropriate prior notice to the seller, opportunity for hearing, and written findings of fact and conclusions of law.

E. The Administrator may vacate or modify an order issued under this section 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.

SECTION 9. AMENDATORY 71 O.S. 1991, Section 814, as amended by Section 5, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 814), is amended to read as follows:

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

1. Issue an order directing ~~the~~ each person to cease and desist from continuing the act or practice and/or issue an order imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or transaction or of Fifty Thousand Dollars (\$50,000.00) for multiple violations or transactions in a single proceeding or a series of related proceedings; or

2. ~~Initially~~ Prior to, concurrently with, or subsequent to an administrative proceeding pursuant to paragraph 1 of this subsection, bring an action in the district court of Oklahoma County or the district court in any other county where service can be obtained on one or more of the defendants to enjoin the acts or practices and to enforce compliance with the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets or the court may order rescission, which shall include restitution plus the legal interest rate, for any sales of business opportunities determined to be unlawful pursuant to the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. The court shall not require the Administrator to post a bond.

B. Except as provided in subsection D of this section or unless the right to notice and hearing is waived by the person against whom the sanction is imposed, the sanctions provided in paragraph 1 of

subsection A of this section may be imposed in an administrative proceeding only after notice and hearing as required by Article II of the Administrative Procedures Act, Section ~~309~~ 308a et seq. of Title 75 of the Oklahoma Statutes. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of ~~said~~ the notice, a permanent order shall be issued.

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

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

~~Once~~ Upon the entry of the summary order ~~is entered~~, the Administrator shall promptly notify the person subject to the summary order ~~that~~:

- a. that the summary order has been entered and the ~~reason~~ reasons therefor,
- b. that the person subject to the summary order, if desiring a hearing, must make written request for ~~such~~ a hearing to the Administrator within fifteen (15) days after receipt of the notice, ~~and~~
- c. that within fifteen (15) days after receipt by the Administrator of a written request ~~for a~~ the matter will be set for hearing from said person or at such earlier time during regular business hours of the

~~Department as mutually agreed upon by the Department and said person, a hearing on the matter shall be commenced~~ to determine whether the summary order should be modified, vacated or become a permanent order as provided in 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.

2. The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or ~~his~~ a designated hearing officer extends the summary order pending a final determination of a permanent order as provided in paragraph 1 of subsection A of this section. The summary order shall become a permanent order if the person to whom notice is addressed does not request a hearing within fifteen (15) days after the receipt of notice. If a request for hearing on the summary order is timely made and if ~~said~~ a hearing is not commenced by the Administrator within the time limit set forth above, the summary order shall dissolve and a cease and desist order shall not be issued pursuant to paragraph 1 of subsection A of this section except upon reasonable notice and opportunity for a hearing as provided in subsection B of this section.

SECTION 10. AMENDATORY 71 O.S. 1991, Section 817, as amended by Section 7, Chapter 169, O.S.L. 1992 (71 O.S. Supp. 1996, Section 817), is amended to read as follows:

Section 817. A. A document is filed when it is received by the Administrator.

B. The Administrator shall keep a register of all applications for registration and disclosure documents which are or have been effective pursuant to the Oklahoma Business Opportunity Sales Act and all orders which have been entered under the act. The register shall be open for public inspection.

C. The information contained in any registration statement, filing, application or report filed with the Administrator may be made available to the public under such rules as the Administrator may prescribe. Information or documents obtained by the Administrator in connection with an investigation pursuant to this title do not constitute public information and shall not be made available to the public. The Administrator may disclose any information obtained in connection with an investigation pursuant to this title for the purpose of a civil, administrative, or criminal proceeding. The Administrator may disclose such information to another regulatory entity if the receiving agency represents in writing that under applicable law protections exist to preserve the integrity, confidentiality, and security of the information.

D. The Administrator may honor written requests from interested persons for interpretive opinions or no-action letters upon the payment of a fee in the amount of Two Hundred Fifty Dollars (\$250.00) which shall be deposited in the Oklahoma Department of Securities Revolving Fund.

SECTION 11. AMENDATORY 71 O.S. 1991, Section 818, is amended to read as follows:

Section 818. A. The provisions of the Oklahoma Business Opportunity Sales Act concerning sales and offers to sell apply to persons who sell or offer to sell when:

1. An offer to sell is made in this state;
2. An offer to purchase is made and accepted in this state; or
3. The purchaser is domiciled in this state and the business opportunity is or will be operated in this state.

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

1. The offer originates from this state; or

2. The offer 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.

C. For the purpose of this section, an offer 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.

D. An offer to sell is not made in this state when:

1. The publisher circulates or there is circulated on his or her 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.

E. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, and the person has not filed a consent to service of process and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the Administrator or the Administrator's successor in office to be the person's agent to receive service of any lawful process in any noncriminal suit, action or proceeding against the person or the person's successor, executor or

administrator which grows out of that conduct and which is brought pursuant to the Oklahoma Business Opportunity Sales Act or any rule or order hereunder with the same force and validity as if served on the person 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 ~~registered~~ certified mail, return receipt requested and delivery restricted to the addressee, to the defendant's or respondent's 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.

F. When process is served under this section, the court, or the Administrator in a proceeding before the Administrator, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

SECTION 12. This act shall become effective November 1, 1997.

46-1-0188

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