

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1389

By: Mazzei of the Senate

and

McCall of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to securities; creating the Oklahoma
11 Intrastate Crowdfunding Exemption Act; providing for
12 definitions; providing an exemption for a certain
13 offer or sale; providing that certain offer or sale
14 conform to certain state and federal laws; requiring
15 certain conditions be met to become an issuer;
16 requiring that certain notice be filed; providing for
17 a filing fee; directing deposit of certain fee into
18 the Oklahoma Department of Securities Revolving Fund;
19 requiring certain items be included in the notice;
20 requiring the issuer provide a disclosure statement;
21 directing what is to be included in disclosure
22 statement; requiring the issuer to provide an escrow
23 agreement to the Oklahoma Securities Commission;
24 directing all funds be deposited into the escrow
account; limiting the amount of cash and other
consideration for sales of a security; providing an
exception to limit; limiting the amount an investor
may purchase based on income; requiring issuer to
obtain certain information from investor; requiring
the issuer to provide an annual report to the
Commission; providing requirements as to what is to
be included in the annual report; authorizing
suspension of notice-filing under certain
circumstances; providing for escrow and refund of
certain funds; providing for codification; and
providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 2-201 of Title 71, unless there
4 is created a duplication in numbering, reads as follows:

5 This act may be cited as the "Oklahoma Intrastate Crowdfunding
6 Exemption Act."

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 2-202 of Title 71, unless there
9 is created a duplication in numbering, reads as follows:

10 As used in this act:

11 1. "Affiliate" means a natural person or entity that controls,
12 is controlled by or under common control of another person or
13 entity.

14 2. "Commission" means the Oklahoma Securities Commission.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2-203 of Title 71, unless there
17 is created a duplication in numbering, reads as follows:

18 1. Notwithstanding any other provision of law, an offer or sale
19 of a security by an issuer is an exempt transaction if the offer or
20 sale is conducted in accordance with this section. The exemption
21 provided in this section may not be used in conjunction with any
22 other exemption under Section 1-202 of Title 71 of the Oklahoma
23 Statutes.

24

1 2. The offer or sale of securities under this section must be
2 conducted in accordance with the requirements of the federal
3 exemption for intrastate offerings in Section 3(a)(11) of the
4 Securities Act of 1933, 15 U.S.C., Section 77c(a)(11), and United
5 States Securities and Exchange Commission Rule 147, 17 C.F.R.,
6 Section 230.147, adopted pursuant to the Securities Act of 1933.

7 3. An issuer must:

- 8 a. be a for-profit business entity formed under the laws
9 of the state, be registered with the Secretary of
10 State, maintain its principal place of business in the
11 state, and derive its revenues primarily from
12 operations in the state,
- 13 b. not be, either before or as a result of the offering,
14 an investment company as defined in Section 3 of the
15 Investment Company Act of 1940, 15 U.S.C., Section
16 80a-3, or subject to the reporting requirements of
17 Section 13 or 15(d) of the Securities Exchange Act of
18 1934, 15 U.S.C., Section 78m or 78o(d),
- 19 c. not be a company with an undefined business operation,
20 a company that lacks a business plan, a company that
21 lacks a stated investment goal for the funds being
22 raised, or a company that plans to engage in a merger
23 or acquisition with an unspecified business entity,

- 1 d. not be subject to a disqualification established by
2 the commission or a disqualification, denial,
3 revocation, suspension, withdrawal, restriction,
4 condition or limitation of registration described in
5 Section 1-411 of Title 71 of the Oklahoma Statutes or
6 United States Securities and Exchange Commission Rule,
7 17 C.F.R., Section 230.506(d), adopted pursuant to the
8 Securities Act of 1933. For this purpose, the issuer
9 shall include each affiliate, director, officer,
10 person occupying a similar status or performing a
11 similar function or person holding more than twenty
12 percent (20%) of the equity of the issuer,
- 13 e. execute an escrow agreement with a federally insured
14 financial institution authorized to do business in the
15 state for the direct deposit of investor and ensure
16 that all offering proceeds are provided to the issuer
17 only when the aggregate capital raised from all
18 investors is equal to or greater than the target
19 offering amount and that all offering proceeds from
20 cancelled or rescinded investments are refunded to
21 investors, and
- 22 f. allow investors to cancel a commitment to invest
23 within three (3) business days before the offering
24 deadline, as stated in the disclosure statement, and

1 issue refunds to all investors if the target offering
2 amount is not reached by the offering deadline.

3 4. The issuer must file a notice of the offering with the
4 Commission, in writing or in electronic form, in a format prescribed
5 by Commission rule, together with a nonrefundable filing fee of Two
6 Hundred Dollars (\$200.00). The filing fee shall be deposited into
7 the Oklahoma Department of Securities Revolving Fund. The
8 Commission may adopt rules establishing procedures for the deposit
9 of fees and the filing of documents by electronic means if the
10 procedures provide the Commission with the information and data
11 required by this section. A notice is effective upon receipt by the
12 Commission of the completed form, filing fee and an irrevocable
13 written consent to service of civil process. The notice may be
14 terminated by filing with the Commission a notice of termination.
15 The notice and offering expire twelve (12) months after filing the
16 notice with the Commission and are not eligible for renewal. The
17 notice must:

- 18 a. be filed with the Commission at least ten (10) days
19 before the issuer commences an offering of securities
20 or the offering is displayed on a website of the
21 issuer or a person acting on behalf of an issuer in
22 reliance upon the exemption provided by this section,
23 b. indicate that the issuer is conducting an offering in
24 reliance upon the exemption provided by this section,

- 1 c. contain the name and contact information of the
2 issuer,
- 3 d. identify any predecessors, affiliates, owners,
4 officers, managers, directors and control persons or
5 any person occupying a similar status or performing a
6 similar function of the issuer, including that
7 person's title, his or her status as a partner,
8 trustee, sole proprietor or similar role, and his or
9 her ownership percentage,
- 10 e. identify the federally insured financial institution
11 authorized to do business in the state in which
12 investor funds will be deposited in accordance with
13 the escrow agreement,
- 14 f. bear an attestation under oath that the issuer, its
15 predecessors, affiliates, directors, officers, and
16 control persons or any other person occupying a
17 similar status or performing a similar function, are
18 not currently and have not been within the past ten
19 (10) years the subject of regulatory or criminal
20 actions involving fraud or deceit,
- 21 g. include documentation verifying that the issuer is
22 organized under the laws of the state and authorized
23 to do business in the state,
- 24 h. include the target offering amount, and

1 i. include the disclosure statement.

2 5. The issuer must amend the notice form within thirty (30)
3 days after any information contained in the notice becomes
4 inaccurate for any reason. The Commission may require, by rule, an
5 issuer who has filed a notice under this section to file amendments
6 with the office.

7 6. The issuer must provide to investors and the Commission at
8 the time that the notice is filed, and make available to potential
9 investors, the disclosure statement containing material information
10 about the issuer and the offering, including:

11 a. the name, legal status, physical address and website
12 address of the issuer,

13 b. the names of the affiliates of the issuer, its
14 directors, officers, and any person occupying a
15 similar status or performing a similar function, and
16 the name of each person holding more than twenty
17 percent (20%) of the equity of the issuer,

18 c. a description of the business of the issuer and the
19 anticipated business plan of the issuer,

20 d. a description of the stated purpose and intended use
21 of the proceeds of the offering,

22 e. the target offering amount, the deadline to reach the
23 target offering amount, and regular updates regarding
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1 the progress of the issuer in meeting the target
2 offering amount,

3 f. the price to the public of the securities or the
4 method for determining the price. However, before the
5 sale, each investor must receive in writing the final
6 price and all required disclosures and have an
7 opportunity to rescind the commitment to purchase the
8 securities,

9 g. a description of the ownership and capital structure
10 of the issuer, including:

11 (1) terms of the securities being offered and each
12 class of security of the issuer, including how
13 those terms may be modified, and a summary of the
14 differences between such securities, including
15 how the rights of the securities being offered
16 may be materially limited, diluted or qualified
17 by rights of any other class of security of the
18 issuer,

19 (2) a description of how the exercise of the rights
20 held by the principal owners of the issuer could
21 negatively impact the purchasers of the
22 securities being offered,

- 1 (3) the name and ownership level of each existing
2 owner who owns more than twenty percent (20%) of
3 any class of the securities of the issuer,
4 (4) how the securities being offered are being valued
5 and examples of methods of how such securities
6 may be valued by the issuer in the future,
7 including during subsequent corporate actions,
8 and
9 (5) the risks to purchasers of the securities
10 relating to minority ownership in the issuer, the
11 illiquidity of the securities and the
12 restrictions on the transfer of the securities
13 under state and federal law, the risks associated
14 with corporate action, including additional
15 issuances of shares, a sale of the issuer or of
16 assets of the issuer, or transactions with
17 related parties,

18 h. a description of the financial condition of the issuer
19 that includes financial statements of the issuer as of
20 and for a twelve-month period ended not more than
21 ninety (90) days before the date of the disclosure
22 statement, or since inception if less than twelve (12)
23 months, and prepared in accordance with generally
24 accepted accounting principles consistently applied

1 and certified by the principal executive officer of
2 the issuer as true and complete in all material
3 respects, and

4 i. the following statement in boldface, conspicuous type
5 on the front page of the disclosure statement:

6 "These securities are offered under, and will be sold in reliance
7 upon, an exemption from the registration requirements of federal and
8 Oklahoma securities laws. Consequently, neither the Federal
9 Government nor the State of Oklahoma has reviewed the accuracy or
10 completeness of any offering materials. In making an investment
11 decision, investors must rely on their own examination of the issuer
12 and the terms of the offering, including the merits and risks
13 involved. These securities are subject to restrictions on
14 transferability and resale and may not be transferred or resold
15 except as specifically authorized by applicable federal and state
16 securities laws. Investing in these securities involves a
17 speculative risk, and investors should be able to bear the loss of
18 their entire investment."

19 7. The issuer shall provide to the Commission a copy of the
20 escrow agreement with a financial institution authorized to conduct
21 business in this state. All investor funds must be deposited
22 directly in the escrow account by the investor. The escrow
23 agreement must require that all offering proceeds be released to the
24 issuer only when the aggregate capital raised from all investors and

1 not cancelled or rescinded is equal to or greater than the minimum
2 target offering amount specified in the disclosure statement as
3 necessary to implement the business plan, and that all investors
4 will receive a full return of their investment commitment if that
5 target offering amount is not raised by the date stated in the
6 disclosure statement.

7 8. The sum of all cash and other consideration received for
8 sales of a security under this section may not exceed One Million
9 Dollars (\$1,000,000.00), less the aggregate amount received for all
10 sales of securities by the issuer within the twelve (12) months
11 preceding the first offer or sale made in reliance upon this
12 exemption. Offers or sales to a person owning twenty percent (20%)
13 or more of the outstanding shares of any class or classes of
14 securities or to an officer, director, partner, or trustee, or a
15 person occupying a similar status, do not count toward this
16 limitation.

17 9. Unless the investor is an accredited investor as defined by
18 Rule 501 of Regulation D, adopted pursuant to the Securities Act of
19 1933, the aggregate amount sold by an issuer and its affiliates to
20 an investor in transactions exempt from registration requirements
21 under this subsection in a 12-month period may not exceed:

22 a. the greater of Two Thousand Dollars (\$2,000.00) or
23 five percent (5%) of the annual income or net worth of
24 such investor, if the annual income or the net worth

1 of the investor is less than One Hundred Thousand
2 Dollars (\$100,000.00), or

- 3 b. ten percent (10%) of the annual income or net worth of
4 such investor, not to exceed a maximum aggregate
5 amount sold of One Hundred Thousand Dollars
6 (\$100,000.00), if either the annual income or net
7 worth of the investor excluding any investments
8 acquired from any issuer in transactions exempt from
9 registration requirements under this subsection is
10 equal to or exceeds One Hundred Thousand Dollars
11 (\$100,000.00). For purposes of this paragraph, "net
12 worth" shall not include any investment acquired from
13 an issuer in a transaction exempt from registration
14 requirements under this exemption.

15 10. The issuer shall:

- 16 a. obtain a zip code or residence address from each
17 potential investor who seeks to view information
18 regarding an investment, in order to confirm that the
19 potential investor is a resident of the state,
20 b. obtain and verify a valid Oklahoma driver license
21 number or Oklahoma identification card number from
22 each investor before purchase of a security to confirm
23 that the investor is a resident of the state. The
24 commission may adopt rules authorizing additional

1 forms of identification and prescribing the process
2 for verifying any identification presented by the
3 investor,

4 c. obtain an affidavit from each investor stating that
5 the investment being made by the investor is
6 consistent with the income and net worth requirements
7 of paragraph 9 of this section,

8 d. direct the release of investor funds in escrow in
9 accordance with paragraph 3 of this section,

10 e. direct investors to transmit funds directly to the
11 financial institution designated in the escrow
12 agreement to hold the funds for the benefit of the
13 investor,

14 f. provide a monthly update for the offering, after the
15 first full month after the date of the offering. The
16 update must be accessible on the issuer's website and
17 must display the date and amount of each sale of
18 securities, and each cancellation or rescissions of
19 commitments to invest, in the previous calendar month,

20 g. require each investor to certify in writing, including
21 as part of such certification his or her signature and
22 his or her initials next to each paragraph of the
23 certification, as follows:

24 "I understand and acknowledge that:

1 I am investing in a high-risk, speculative business venture. I may
2 lose all of my investment, and I can afford the loss of my
3 investment.

4 This offering has not been reviewed or approved by any state or
5 federal securities commission or other regulatory authority, and no
6 regulatory authority has confirmed the accuracy or determined the
7 adequacy of any disclosure made to me relating to this offering.

8 The securities I am acquiring in this offering are illiquid and
9 are subject to possible dilution. There is no ready market for the
10 sale of the securities. It may be difficult or impossible for me to
11 sell or otherwise dispose of the securities, and I may be required
12 to hold the securities indefinitely. I may be limited in making
13 sales outside of this state and I understand and agree that I will
14 not resell any of the securities I am acquiring in this offering to
15 a person that is not an Oklahoma resident within nine (9) months
16 after the closing of the offering.

17 I may be subject to tax on my share of the taxable income and
18 losses of the issuer, whether or not I have sold or otherwise
19 disposed of my investment or received any dividends or other
20 distributions from the issuer.

21 By entering into this transaction with the issuer, I am
22 affirmatively representing myself as being an Oklahoma resident at
23 the time this contract is formed." and
24

1 h. take reasonable steps to protect personal information
2 collected from investors.

3 11. The issuer shall file with the Commission and provide to
4 investors free of charge an annual report of the results of
5 operations and financial statements of the issuer within forty (45)
6 days after the end of its fiscal year, until no securities under
7 this offering are outstanding. The annual reports must meet the
8 following requirements:

9 a. include an analysis by management of the issuer of the
10 business operations and the financial condition of the
11 issuer, and disclose the compensation received by any
12 payments or other benefits received by each affiliate
13 of the issuer, director, executive officer, and person
14 having an ownership interest of twenty percent (20%)
15 or more of the issuer, including cash compensation
16 earned since the previous report and on an annual
17 basis, and any bonuses, stock options, other rights to
18 receive securities of the issuer, or any affiliate of
19 the issuer, or other compensation received, and

20 b. disclose any material change to information contained
21 in the disclosure statements which was not disclosed
22 in a previous report.

23 12. a. A notice-filing under this section shall be summarily
24 suspended by the Commission if the payment for the

1 filing is dishonored by the financial institution upon
2 which the funds are drawn. Failure to pay the
3 required notice-filing fee constitutes an immediate
4 and serious danger to the public health, safety, and
5 welfare. The Commission shall enter a final order
6 revoking a notice-filing in which the payment for the
7 filing is dishonored by the financial institution upon
8 which the funds are drawn.

9 b. A notice-filing under this section shall be summarily
10 suspended by the Commission if the issuer made a
11 material false statement in the issuer's notice-
12 filing. The disclosure statement shall be part of the
13 notice-filing. The summary suspension shall remain in
14 effect until a final order is entered by the
15 Commission. A material false statement made in the
16 issuer's notice-filing constitutes an immediate and
17 serious danger to the public health, safety, and
18 welfare. If an issuer made a material false statement
19 in the issuer's notice-filing, the Commission shall
20 enter a final order revoking the notice-filing and
21 issue permanent bars to the issuer and all owners,
22 officers, directors, and control persons, or any
23 person occupying a similar status or performing a
24 similar function of the issuer, including title,

1 status as a partner, trustee, sole proprietor or
2 similar role, and ownership percentage.

3 13. All funds received from investors must be directed to the
4 financial institution designated in the escrow agreement to hold the
5 funds and must be used in accordance with representations made to
6 investors by the issuer. If an investor cancels or rescinds a
7 commitment to invest, the issuer must direct the financial
8 institution designated to hold the funds to promptly refund the
9 funds of the investor.

10 SECTION 4. This act shall become effective November 1, 2016.

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