SENATE FLOOR VERSION
March 1, 2017

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 468 By: Newberry

[State Banking Commissioner - Consumer Credit Commission - Oklahoma Securities Commission - voting member - ~~emergency~~]

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

SECTION 1. AMENDATORY 14A O.S. 2011, Section 6-502, is amended to read as follows:

Section 6-502. A. The Commission on Consumer Credit shall consist of nine (9) members to be appointed by the Governor by and with the advice and consent of the Senate. The State Banking Commissioner shall be an ex officio ~~nonvoting~~ voting tenth member of the Commission.

B. It is unlawful for any member of the Commission, the Administrator of Consumer Credit, or any other officer or employee of the Department to use for personal benefit any information which is filed with or obtained by the Administrator and which is not made public. No provision of the Uniform Consumer Credit Code authorizes any member of the Commission, the Administrator, or any other officer or employee of the Department to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation according to the provisions of the Uniform Consumer Credit Code. The provisions of the Uniform Consumer Credit Code shall not be construed to create or derogate any privilege that exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to any member of the Commission, the Administrator, or any other officer or employee of the Department.

C. Except upon proof of corruption, no member of the Commission shall be civilly liable to any applicant or other person for any acts or omissions.

D. No member of the Commission shall participate in any proceeding before the Commission involving any corporation, partnership, or unincorporated association for which the member is or was at any time in the preceding twelve (12) months a director, officer, partner, employee, member, or stockholder. A member of the Commission may disqualify himself <u>or herself</u> from participation in any proceeding before the Commission for any cause deemed by him <u>or her</u> to be sufficient.

SECTION 2. AMENDATORY 71 O.S. 2011, Section 1-601, as amended by Section 643, Chapter 304, O.S.L. 2012 (71 O.S. Supp. 2016, Section 1-601), is amended to read as follows:

Section 1-601. A. The Administrator shall administer ~~this act~~ the Oklahoma Uniform Securities Act of 2004.

B. There are hereby created the Oklahoma Securities Commission and the Department of Securities. The Commission shall be the policy making and governing authority of the Department, shall appoint the Administrator and shall be responsible for the enforcement of ~~this act~~ the Oklahoma Uniform Securities Act of 2004.

C. 1. The Commission shall consist of four (4) members to be appointed by the Governor by and with the advice and consent of the Senate. One member will be a member of the Oklahoma Bar Association appointed from a list of five nominees submitted by the Oklahoma Bar Association; one member shall be an active officer of a bank or trust company operating in the State of Oklahoma appointed from a list of five nominees submitted by the Oklahoma Bankers Association; and one member shall be a certified public accountant appointed from a list of five nominees submitted by the Oklahoma Society of Certified Public Accountants; and one member shall be engaged in the securities industry and shall be appointed for a six-year initial term from a list of five nominees submitted by the Oklahoma Securities Industry Association; provided, that the State ~~Bank~~ Banking Commissioner ~~of Oklahoma~~ shall be and ~~he~~ is hereby made an ex officio voting member of ~~said~~ the Commission.

2. Except for appointment of the member engaged in the securities industry as provided for in subsection C of this section,

no person may be appointed to or by the Commission while ~~he~~ such person is registered as a broker-dealer, agent, investment adviser, or investment adviser representative under ~~this act~~ the Oklahoma Uniform Securities Act of 2004, or while he or she is an officer, director, or partner of any person so registered, or while he or she is an officer, director, or partner of an issuer which has a registration statement effective under ~~this act~~ the Oklahoma Uniform Securities Act of 2004, or while he or she is occupying a similar status or performing similar functions.

3. It is unlawful for any member of the Commission, the Administrator, or any other officer or employee of the Department to use for personal benefit any information which is filed with or obtained by the Administrator and which is not made public. No provision of ~~this act~~ the Oklahoma Uniform Securities Act of 2004 authorizes any member of the Commission, the Administrator or any other officer or employee of the Department to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under ~~this act~~ the Oklahoma Uniform Securities Act of 2004 or in connection with a proceeding or investigation conducted by any state, federal or foreign law enforcement agency, securities agency or self-regulatory organization. No provision of ~~this act~~ the Oklahoma Uniform Securities Act of 2004 either creates or derogates from any privilege which exists at common law or otherwise when documentary

or other evidence is sought under a subpoena directed to any member of the Commission, the Administrator or any other officer or employee of the Department.

4. Except on proof of corruption, no Commissioner shall for his or her acts or ~~his~~ failure to act be civilly liable to any investor, applicant for registration, or any other person.

D. The Governor shall biennially appoint Commission members to serve for a staggered term of six (6) years. Upon the expiration of initial terms, the term of each member shall be six (6) years from the date of his or her appointment and qualification, and until his or her successor shall qualify. Vacancies shall be filled by the Governor for the unexpired term. Members shall be eligible for reappointment.

E. The Commission shall select a 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 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 chair or by any two members. Complete minutes of each meeting shall be kept and filed in the Department 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 ~~this act~~ <u>the Oklahoma Uniform Securities Act of 2004</u> and action taken thereon, a list of securities registered under ~~this act~~ <u>the Oklahoma Uniform Securities Act of 2004</u> and such other data and information as may be deemed necessary or appropriate. 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 ~~this act~~ <u>the Oklahoma Uniform Securities Act of 2004</u>.

F. The Commission shall appoint a full-time Administrator, who shall serve at the pleasure of the Commission. ~~He~~ <u>The Administrator</u> shall administer the ~~act~~ <u>Oklahoma Uniform Securities Act of 2004</u> under the supervision of the Commission and in accordance with its policies.

G. The Administrator shall be a person of good moral character, at least thirty (30) years of age, a resident taxpayer of Oklahoma, and thoroughly familiar with corporate organization, investment banking, investment trusts, the sale of securities, and the statistical details of the manufacturing industries and commerce of this state. In addition, the Administrator shall:

1. Be a graduate of an accredited law school and a member of the Oklahoma Bar Association, or shall have had ten (10) years' experience as a certified public accountant; and

2. Have at least three (3) years' work experience involving some aspect of the securities industry. The Commission may also require additional qualifications. The salary of the Administrator shall be fixed by the Commission.

H. The Administrator, with the approval of the Commission, may designate a Deputy Securities Administrator, who shall possess the same qualifications, including bond, required for the Administrator and who shall perform all the duties required to be performed by the Administrator when the Administrator is absent or unable to act for any reason.

I. Before assuming office, the Administrator shall give a bond in the sum of Fifty Thousand Dollars ($50,000.00) payable to the State of Oklahoma, to be approved by the Attorney General of the State of Oklahoma, conditioned that he <u>or she</u> will faithfully execute the duties of ~~his~~ <u>the</u> office. The Administrator may by rule or order require any employee of the Department to be bonded on the same condition and in the same or such lesser amount as he <u>or she</u> determines. The expense of all such bonds shall be paid from funds available to the Department.

J. 1. The internal administrative organization of the Department shall be determined by the Commission in such manner as to promote the efficient and effective enforcement of ~~this act~~ the Oklahoma Uniform Securities Act of 2004. The Department shall include, but not be limited to, divisions relating to:

a. registration of broker-dealers, agents, investment advisers, and investment adviser representatives,

b. registration of securities,

c. investigation and enforcement, and

d. investor education.

2. Within the division of investor education, the Department may provide the following services at the discretion of the Administrator:

a. informing investors of all rights and remedies available under this act,

b. informing investors of the availability of private dispute resolution, including arbitration and mediation, as an alternative to other courses of action,

c. acting as a liaison between investors and the other divisions of the Department, and

d. acting as a liaison between investors and issuers of securities, broker-dealers or investment advisers subject to the jurisdiction of the Department under this act.

Nothing in this subsection shall authorize any employee of the Department to represent the interests of, or to serve as counsel for, investors in any proceeding or action to include an administrative or civil proceeding brought by the Department or the Securities and Exchange Commission, a proceeding brought by the National Association of Securities Dealers, Inc., or an arbitration or mediation proceeding. Further, no employee of the Department may advise any person about the value of securities or as to the advisability of investing in, purchasing or selling securities, or as to the value or merits of pursuing a particular course of action.

3. Employees of the division of investor education shall not be exempt from the provisions of the Open Records Act and Section 1-607 of this title.

K. The Administrator shall prepare in writing a manual of necessary employee positions for the Department, including job classifications, personnel qualifications, duties, maximum and minimum salary schedules, and other personnel information, which shall be approved by the Commission. The Administrator may select, appoint, and employ such accountants, auditors, examiners, clerks, stenographers, and other personnel as he or she deems necessary for the proper administration of ~~this act~~ the Oklahoma Uniform Securities Act of 2004, and may fix their compensation and the salary of the Deputy Administrator. The Deputy Administrator and other employees of the Department shall serve at the pleasure of the Administrator.

L. The Commission and the Securities Department shall be assigned offices in Oklahoma City, Oklahoma, by the Office of Management and Enterprise Services, and all records of the Commission and Department shall be kept in those offices, unless and until transferred to the Records Management Division of the Oklahoma Department of Libraries.

M. The Department of Securities' attorney, paralegal, legal secretary, accountant, investigator, examiner, chief financial officer, network administrator, business manager, and investor education coordinator positions shall be in the unclassified service and are in no way subject to any of the provisions of the Merit System of Personnel Administration or of the rules promulgated by the Office of Management and Enterprise Services except those relating to leave regulations.

N. 1. Neither the Administrator nor any employee of the Department, during their respective terms of employment, shall serve as a director, officer, shareholder, member, partner, agent or employee of any person who, during the period of such Administrator's or employee's employment with the Department:

a. was licensed or applied for registration as a broker-dealer, agent, investment adviser or investment adviser representative under this act, or

b. applied for or secured the registration of securities under ~~this act~~ the Oklahoma Uniform Securities Act of 2004.

2. Nothing in paragraph 1 of this subsection shall prohibit the holding, purchasing or selling of any securities by the Administrator or any employee of the Department in accordance with regulations adopted by the Commission for the purpose of protecting the public interest and avoiding conflicts of interest.

3. Nothing contained in paragraph 1 of this subsection shall prohibit the holding, purchasing or selling of any securities of any issuer described in subparagraph b of paragraph 1 of this subsection of this section by the Administrator if either:

a. the Administrator together with his or her spouse, or minor children, owns less than one percent (1%) of any class of outstanding securities of any such issuer so long as such securities are not purchased in an initial public offering, or

b. such securities are held or purchased through a management account or trust administered by a bank or trust company authorized to do business in this state that has sole investment discretion regarding the holding, purchasing or selling of such securities and the Administrator or employee did not, directly or indirectly, advise, counsel or command the holding, purchasing or selling of any securities or furnish any information relating to any such securities to such bank or trust company and further, such account or trust does not at any time have more than ten percent (10%) of its total assets invested in the securities of any one issuer or hold more than five percent (5%) of the outstanding securities of any class of securities of any one issuer.

O. ~~This act~~ The Oklahoma Uniform Securities Act of 2004 does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

P. The Administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the Administrator may collaborate with public and nonprofit organizations with an interest in investor education. The Administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the Administrator to require participation or monetary contributions of a registrant in an investor education program.

~~SECTION 3. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.~~

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
March 1, 2017 - DO PASS AS AMENDED