

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 ENGROSSED SENATE
5 BILL NO. 1091

By: Floyd of the Senate

and

Munson of the House

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9 An Act relating to the Oklahoma Uniform Securities
10 Act of 2004; amending 71 O.S. 2021, Section 1-601, as
11 amended by Section 34, Chapter 77, O.S.L. 2022 (71
12 O.S. Supp. 2022, Section 1-601), which relates to
13 administration; clarifying membership of Oklahoma
14 Securities Commission; modifying qualifications for
15 certain member of Commission; updating statutory
16 language; and declaring an emergency.

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

18 SECTION 1. AMENDATORY 71 O.S. 2021, Section 1-601, as
19 amended by Section 34, Chapter 77, O.S.L. 2022 (71 O.S. Supp. 2022,
20 Section 1-601), is amended to read as follows:

21 Section 1-601. A. The Administrator shall administer the
22 Oklahoma Uniform Securities Act of 2004.

23 B. There are hereby created the Oklahoma Securities Commission
24 and the Department of Securities. The Commission shall be the
policy making and governing authority of the Department, shall

1 appoint the Administrator and shall be responsible for the
2 enforcement of the Oklahoma Uniform Securities Act of 2004.

3 C. 1. The Commission shall consist of ~~four (4) members to~~ five
4 (5) members, including the State Banking Commissioner who shall
5 serve as an ex officio voting member. Four (4) members shall be
6 appointed by the Governor by and with the advice and consent of the
7 Senate. One member will be a member of the Oklahoma Bar Association
8 appointed from a list of five nominees submitted by the Oklahoma Bar
9 Association; one member shall be an active officer of a bank or
10 trust company operating in the State of Oklahoma appointed from a
11 list of five nominees submitted by the Oklahoma Bankers Association;
12 and one member shall be a certified public accountant appointed from
13 a list of five nominees submitted by the Oklahoma Society of
14 Certified Public Accountants; and one member shall be a resident of
15 this state actively engaged in the securities industry and shall be
16 appointed for a six-year initial term from a list of five nominees
17 submitted by the Oklahoma Securities Industry Association with the
18 qualifications set forth in paragraph 3 of this subsection;
19 ~~provided, that the State Banking Commissioner shall be and is hereby~~
20 ~~made an ex officio voting member of the Commission.~~

21 2. Except for appointment of the member engaged in the
22 securities industry as provided for in subsection C of this section,
23 no person may be appointed to or by the Commission while such person
24 is registered as a broker-dealer, agent, investment adviser, or

1 investment adviser representative under the Oklahoma Uniform
2 Securities Act of 2004, or while he or she is an officer, director,
3 or partner of any person so registered, or while he or she is an
4 officer, director, or partner of an issuer which has a registration
5 statement effective under the Oklahoma Uniform Securities Act of
6 2004, or while he or she is occupying a similar status or performing
7 similar functions.

8 3. The member appointed as a representative of the securities
9 industry shall:

- 10 a. be currently registered as an agent, investment
11 adviser, or investment adviser representative under
12 the requirements of this title,
- 13 b. have at least ten (10) years of experience in the
14 industry immediately preceding appointment, and
- 15 c. have not been subject to a regulatory action requiring
16 disclosure on the uniform applications for
17 registration for agents, investment advisers, or
18 investment adviser representatives.

19 The member may be removed from office by the Governor when the
20 member has ceased to be qualified based on subparagraph a or c of
21 this paragraph.

22 4. It is unlawful for any member of the Commission, the
23 Administrator, or any other officer or employee of the Department to
24 use for personal benefit any information which is filed with or

1 obtained by the Administrator and which is not made public. No
2 provision of the Oklahoma Uniform Securities Act of 2004 authorizes
3 any member of the Commission, the Administrator or any other officer
4 or employee of the Department to disclose any such information
5 except among themselves or when necessary or appropriate in a
6 proceeding or investigation under the Oklahoma Uniform Securities
7 Act of 2004 or in connection with a proceeding or investigation
8 conducted by any state, federal or foreign law enforcement agency,
9 securities agency or self-regulatory organization. No provision of
10 the Oklahoma Uniform Securities Act of 2004 either creates or
11 derogates from any privilege which exists at common law or otherwise
12 when documentary or other evidence is sought under a subpoena
13 directed to any member of the Commission, the Administrator or any
14 other officer or employee of the Department.

15 ~~4.~~ 5. Except on proof of corruption, no Commissioner shall for
16 his or her acts or failure to act be civilly liable to any investor,
17 applicant for registration, or any other person.

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

1 E. The Commission shall select a chair and is hereby authorized
2 to adopt rules for conducting its proceedings. Any three members
3 shall constitute a quorum for transacting Commission business. The
4 Commission shall meet bimonthly on such date as it may designate and
5 may meet at such other times as it may deem necessary, or when
6 called by the chair or by any two members. Complete minutes of each
7 meeting shall be kept and filed in the Department and shall be
8 available for public inspection during reasonable office hours. The
9 Commission shall report annually to the Governor, to the Speaker of
10 the House of Representatives and to the President Pro Tempore of the
11 Senate. The report shall contain the minutes of each meeting held
12 during the year, legislative recommendations, a summary of
13 violations of the Oklahoma Uniform Securities Act of 2004 and action
14 taken thereon, a list of securities registered under the Oklahoma
15 Uniform Securities Act of 2004 and such other data and information
16 as may be deemed necessary or appropriate. The Commission is hereby
17 authorized to publish such report, and the Administrator may sell
18 copies of such report at such price as is reasonably sufficient to
19 defray the expenses of the Department in preparing, publishing, and
20 disseminating the same. Each member of the Commission shall have
21 unrestricted access to all offices and records under the
22 jurisdiction of the Department. The Commission, or a majority
23 thereof, may exercise any power or perform any act authorized for
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1 the Administrator under the provisions of the Oklahoma Uniform
2 Securities Act of 2004.

3 F. The Commission shall appoint a full-time Administrator, who
4 shall serve at the pleasure of the Commission. The Administrator
5 shall administer the Oklahoma Uniform Securities Act of 2004 under
6 the supervision of the Commission and in accordance with its
7 policies.

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

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

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

21 H. The Administrator, with the approval of the Commission, may
22 designate a Deputy Securities Administrator, who shall possess the
23 same qualifications, including bond, required for the Administrator
24 and who shall perform all the duties required to be performed by the

1 Administrator when the Administrator is absent or unable to act for
2 any reason.

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

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

- 17 a. registration of broker-dealers, agents, investment
18 advisers, and investment adviser representatives,
- 19 b. registration of securities,
- 20 c. investigation and enforcement, and
- 21 d. investor education.

22 2. Within the division of investor education, the Department
23 may provide the following services at the discretion of the
24 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.~~ Financial Industry Regulatory Authority, 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.

1 3. Records of the division of investor education shall not be
2 exempt from the provisions of the Open Records Act and Section 1-607
3 of this title except as provided for in subparagraph 8 of paragraph
4 B of Section 1-607 of this title.

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

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

23 M. 1. Neither the Administrator nor any employee of the
24 Department, during their respective terms of employment, shall serve

1 as a director, officer, shareholder, member, partner, agent or
2 employee of any person who, during the period of such
3 Administrator's or employee's employment with the Department:

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

7 b. applied for or secured the registration of securities
8 under the Oklahoma Uniform Securities Act of 2004.

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

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

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

23 b. such securities are held or purchased through a
24 management account or trust administered by a bank or

1 trust company authorized to do business in this state
2 that has sole investment discretion regarding the
3 holding, purchasing or selling of such securities and
4 the Administrator or employee did not, directly or
5 indirectly, advise, counsel or command the holding,
6 purchasing or selling of any securities or furnish any
7 information relating to any such securities to such
8 bank or trust company and further, such account or
9 trust does not at any time have more than ten percent
10 (10%) of its total assets invested in the securities
11 of any one issuer or hold more than five percent (5%)
12 of the outstanding securities of any class of
13 securities of any one issuer.

14 N. The Oklahoma Uniform Securities Act of 2004 does not create
15 or diminish a privilege or exemption that exists at common law, by
16 statute or rule, or otherwise.

17 O. The Administrator may develop and implement investor
18 education initiatives to inform the public about investing in
19 securities, with particular emphasis on the prevention and detection
20 of securities fraud. In developing and implementing these
21 initiatives, the Administrator may collaborate with public and
22 nonprofit organizations with an interest in investor education. The
23 Administrator may accept a grant or donation from a person that is
24 not affiliated with the securities industry or from a nonprofit

1 organization, regardless of whether the organization is affiliated
2 with the securities industry, to develop and implement investor
3 education initiatives. This subsection does not authorize the
4 Administrator to require participation or monetary contributions of
5 a registrant in an investor education program.

6 SECTION 2. It being immediately necessary for the preservation
7 of the public peace, health or safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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11 COMMITTEE REPORT BY: COMMITTEE ON BANKING, FINANCIAL SERVICES AND
12 PENSIONS, dated 04/03/2023 - DO PASS.
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