

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 2637

By: Echols

AS INTRODUCED

An Act relating to securities; providing exempt treatment for certain specified securities pursuant to rules adopted by the United States Securities and Exchange Commission; requiring compliance with certain federal securities laws; providing for disqualification of offerings based on noncompliance; requiring issuer of securities to file notice; prescribing required content of notice; authorizing Oklahoma Securities Department to adopt rules; providing for termination of notice; imposing dollar limitation; prescribing time period; requiring disclosure of terms of issuance; imposing limitation on sale of certain securities within certain time period; providing exception for accredited investor; requiring annual report; providing for suspension of notice filing; providing for duration of suspension; prohibiting materially false statements; imposing restrictions based on materially false statements; requiring offering through Internet website; imposing restriction on communications; prescribing requirements for communication; authorizing a general public notice; providing for certain corrective actions; requiring disclosure statement; prescribing content; providing for exemption; defining term; prohibiting use of exemption under certain circumstances; prohibiting issuance of securities by certain issuers based on conduct; authorizing application for waiver; prescribing procedures for payments for purchase of securities; authorizing segregated account; defining terms; prescribing procedures related to segregated accounts; providing for account administration; imposing requirements related to content of Internet website; providing for cooling off period; imposing requirements with respect to crowdfunding portal; requiring application

1 with the Oklahoma Securities Department; prescribing
2 content; providing for expiration of registration;
3 prohibiting certain activities; requiring background
4 investigations; defining term; providing for
5 codification; and providing an effective date.

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

7 SECTION 1. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-801 of Title 71, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Notwithstanding any other provision of law, a security
11 offered for sale by an issuer under Rule 147 (17 C.F.R 230.147) or
12 Rule 147A (17 C.F.R 230.147A) adopted by the United States
13 Securities and Exchange Commission under the Securities Act of 1933
14 shall be exempt from the requirements under Sections 1-301 and 1-504
15 of Title 71 of the Oklahoma Statutes. Securities issued under this
16 exemption must maintain compliance with the federal exemption for
17 intrastate offerings in Section 3(a)(11) of the Securities Act of
18 1933 (15 U.S.C., Section 77c(a)(11)). Failure to maintain
19 compliance with the federal exemption for intrastate offerings shall
20 disqualify an offering for exemption under this section.

21 B. The issuer must file a notice of the offering with the
22 Department, in writing or in electronic form, together with a
23 nonrefundable filing fee, in a form and format to be determined by
24 Department rule. The notice filing shall include a notice of

1 exemption, the disclosure statement required by Section 2 of this
2 act, and the summary of the offering required by Section 6 of this
3 act. The Department may adopt rules establishing procedures for the
4 deposit of fees and the filing of documents by electronic means. A
5 notice is effective upon receipt by the Department and payment of
6 the filing fee. The notice may be terminated by filing with the
7 Department a notice of termination. The notice and offering expire
8 twelve (12) months after filing the notice with the Department.

9 C. The issuer must amend the notice within thirty (30) days if,
10 at any time, any information provided in the notice becomes
11 materially inaccurate.

12 D. The sum of all cash and other consideration received for the
13 sale of securities under this section shall be limited to One
14 Million Dollars (\$1,000,000.00) within the twelve-month period
15 starting from the effective date of the notice filing. This
16 provision shall not be interpreted to restrict an issuer from
17 issuing additional securities intended to qualify for exemptions
18 under other federal or Oklahoma securities laws.

19 E. The issuer must disclose in the disclosure statement the
20 terms under which all other forms of equity are being issued and
21 sold irrespective of the securities being issued and sold under an
22 Oklahoma or federal exemption or the purchasers being accredited or
23 not.

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1 F. Unless the investor is an accredited investor as defined by
2 Rule 501 of Regulation D, adopted pursuant to the Securities Act of
3 1933, the aggregate amount sold by an issuer to a purchaser in
4 transactions exempt from registration requirements under this
5 section in a twelve-month period may not exceed Five Thousand
6 Dollars (\$5,000.00). The issuer must have a reasonable basis for
7 believing that the purchaser of a security qualifying for exemption
8 under this section is an Oklahoma resident and, if applicable, an
9 accredited investor.

10 G. The issuer shall file with the Department and provide to
11 purchasers without cost an annual report of the results of the
12 operations and financial statements of the issuer within forty-five
13 (45) days after the end of its fiscal year in a form and manner to
14 be prescribed by the Department until no securities under this
15 offering are outstanding.

16 H. A notice filing under this section shall be immediately
17 suspended by the Department if the payment of the filing fee is
18 dishonored by the financial institution upon which the funds are
19 drawn. The suspension shall remain in effect for fourteen (14)
20 calendar days. If the issuer does not remit the filing fee within
21 fourteen (14) calendar days beginning on the date of the suspension,
22 the Department shall enter a final order revoking the issuer's
23 notice filing.

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1 I. A notice filing under this section shall be immediately
2 suspended by the Department if the issuer is determined to have made
3 any materially false statements in the issuer's notice filing. The
4 suspension shall remain in effect until the matter has been
5 investigated by the Department and either the suspension of the
6 notice filing has been removed or a final order is entered by the
7 Department revoking the notice filing. If an issuer is determined
8 to have made any materially false statements in the issuer's notice
9 filing, the Department shall bar the officers, directors and control
10 persons of the issuer from the use of the exemption in this section
11 for a period of five (5) years from the entry date of the final
12 order revoking the notice filing.

13 J. Offers and sales of an issuer's securities must be made
14 exclusively through an Internet website operated by a registered
15 broker-dealer or a crowdfunding portal required to be registered
16 under this act.

17 K. All communications between the issuer, purchasers or
18 prospective purchasers, taking place during the offer of securities
19 pursuant to this section must occur through the Internet website of
20 the registered broker-dealer or registered crowdfunding portal.
21 During the time the offering appears on the Internet website, the
22 website must provide channels through which purchasers and
23 prospective purchasers can communicate with one another and with
24 representatives of the issuer about the offering. These

1 communications must be visible to all those with access to the
2 offering materials on the Internet website.

3 L. Notwithstanding subsection K of this section, the issuer may
4 distribute a general public notice ("General Notice") within
5 Oklahoma limited to a statement that the issuer is conducting an
6 offering, the name of the registered broker-dealer or registered
7 crowdfunding portal through which the offering is being conducted
8 and a link directing the potential investor to the broker-dealer's
9 or portal's Internet website.

10 M. The Department shall immediately suspend the notice filing
11 of an issuer in violation of subsection K of this section. If
12 corrective action is not taken by the issuer, the Department shall
13 enter a final order revoking the notice filing and terminating the
14 offering.

15 SECTION 2. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-802 of Title 71, unless there
17 is created a duplication in numbering, reads as follows:

18 The issuer must make available to potential investors and
19 deliver to investors and the broker-dealer or registered portal,
20 along with a copy to the Department at the time the notice is filed,
21 a disclosure statement containing material information about the
22 issuer and the offering, including, but not limited to:

23 1. The name, legal status, physical address and Internet
24 website of the issuer;

1 2. The names of the directors, officers and control persons
2 along with descriptions of each person's background and
3 qualifications;

4 3. The names of each person holding more than twenty percent
5 (20%) of the shares of the issuer;

6 4. A description of the business of the issuer and a history of
7 the issuer's organization and operations;

8 5. A description of the stated purpose and intended use of the
9 proceeds of the offering;

10 6. The target offering amount, the deadline to reach the target
11 offering amount, and any minimum amount required to close the
12 offering if such minimum is less than the target offering amount;

13 7. The price to the public of the securities along with the
14 method for determining the price;

15 8. A description of the ownership and capital structure of the
16 issuer including:

17 a. the terms under which each type and class of security
18 is offered,

19 b. the rights granted to owners of each type and class of
20 security, and

21 c. how the rights of the securities being offered may be
22 affected by the rights of any other class of security
23 of the issuer;

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1 9. A description of the financial condition of the issuer to
2 include:

- 3 a. a copy of the most recent tax return filed by the
4 issuer, if any, and
- 5 b. financial statements for the previous three (3) years,
6 or, for an issuer in business for less than three (3)
7 years, financial statements for each year the issuer
8 has been operating. The financial statements must be
9 prepared in accordance with generally accepted
10 accounting principles and certified by the principal
11 executive officer of the issuer to be true and
12 complete in all material respects. The financial
13 statements must be reviewed by a certified public
14 accountant independent of the issuer using
15 professional standards and procedures for such review
16 or standards and procedures established by the
17 Department for such purpose;

18 10. Any current or reasonably anticipated litigation or legal
19 proceedings in which the issuer is involved;

20 11. The issuer shall inform all prospective purchasers and
21 investors of the following:

- 22 a. there is no ready market for the sale of the
23 securities acquired from this offering; it may be
24 difficult or impossible for an investor to sell or

1 otherwise dispose of this investment. An investor may
2 be required to hold and bear the financial risks of
3 this investment indefinitely,

4 b. the securities have not been registered under federal
5 or state securities laws and, therefore, cannot be
6 resold unless the securities are registered or qualify
7 for an exemption from registration under federal and
8 state law,

9 c. in making an investment decision, investors must rely
10 on their own examination of the issuer and the terms
11 of the offering, including the merits and risks
12 involved, and

13 d. no federal or state securities commission or
14 regulatory authority has confirmed the accuracy or
15 determined the adequacy of the disclosure statement or
16 any other information on this Internet website.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-803 of Title 71, unless there
19 is created a duplication in numbering, reads as follows:

20 A. An issuer of securities claiming exemption under this
21 section shall be a resident of and doing business within the State
22 of Oklahoma.

23 B. An issuer shall be deemed to be a resident of Oklahoma if
24 the issuer's principal place of business is located within the

1 state. The issuer shall be deemed to have its principal place of
2 business in Oklahoma if the officers, partners or managers of the
3 issuer that primarily direct, control and coordinate the activities
4 of the issuer are located within the State of Oklahoma.

5 C. An issuer shall be deemed to be doing business in Oklahoma
6 if the issuer satisfies at least one of the following requirements:

7 1. The issuer derived at least eighty percent (80%) of its
8 consolidated gross revenues from the operation of a business or of
9 real property located in or from the rendering of services within
10 the State of Oklahoma;

11 2. The issuer had at the end of its most recent semiannual
12 fiscal period prior to an initial offer of securities in any
13 offering or subsequent offering pursuant to this section, at least
14 eighty percent (80%) of its assets and those of its subsidiaries on
15 a consolidated basis located within the State of Oklahoma;

16 3. The issuer intends to use and uses at least eighty percent
17 (80%) of the net proceeds to the issuer from sales made pursuant to
18 this section in connection with the operation of a business or of
19 real property, the purchase of real property located in, or the
20 rendering of services within, the State of Oklahoma; or

21 4. A majority of the issuer's employees are based in such state
22 or territory.

23 D. An issuer shall not be permitted to use this exemption if:
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1 1. A company that has not yet defined its business operations,
2 has no business plan, has no stated investment goal for the funds
3 being raised, or that plans to engage in a merger or acquisition
4 with an unspecified business entity;

5 2. Subject to the reporting requirements of the Securities and
6 Exchange Act of 1934, Section 13 or Section 15(d), 15 U.S.C. Section
7 78m and Section 78o(d);

8 3. A control person of the issuer is also a control person of
9 another issuer that has made a securities offering under this
10 exemption within the previous twelve-month period in Oklahoma;

11 4. A control person of the issuer is also a control person of
12 another issuer that is concurrently conducting a securities offering
13 under this exemption in Oklahoma; or

14 5. The proceeds of the offering will be combined with the
15 proceeds of a securities offering by another issuer as part of a
16 single plan of financing.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-804 of Title 71, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Notwithstanding the foregoing, the following issuer is
21 prohibited from offering securities under this section:

22 1. Within the last five (5) years, has filed a registration
23 statement that is the subject of a currently effective registration
24 stop order entered by any state securities administrator or the SEC;

1 2. Within the last five (5) years, has been convicted of any
2 criminal offense in connection with the offer, purchase or sale of
3 any security, or involving fraud or deceit;

4 3. Is currently subject to any state or federal administrative
5 enforcement order or judgment, entered within the last five (5)
6 years, finding fraud or deceit in connection with the purchase or
7 sale of any security; or

8 4. Is currently subject to any order, judgment or decree of any
9 court of competent jurisdiction, entered within the last five (5)
10 years, temporarily, preliminarily or permanently restraining or
11 enjoining such party from engaging in or continuing to engage in any
12 conduct or practice involving fraud or deceit in connection with the
13 purchase or sale of any security.

14 B. An issuer may apply to the Administrator for a waiver from
15 the prohibitions in paragraph 4 of subsection A of this section.
16 Such application shall be in a form and manner prescribed by the
17 Department. The Administrator in his discretion may grant such a
18 waiver based on the specific facts and circumstances stated and
19 submitted in writing and attested to under penalty of perjury where
20 the Administrator determines such waiver is appropriate and in the
21 public interest.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-805 of Title 71, unless there
24 is created a duplication in numbering, reads as follows:

1 A. All payments for purchases of securities offered under this
2 section shall be directed to and deposited into an escrow account or
3 segregated account if permitted under subsection B of this section.
4 The payments must be held in an escrow account or a segregated
5 account until the aggregate capital raised from all purchases is
6 equal to or greater than the minimum target offering amount
7 specified in the disclosure statement as necessary to implement the
8 business plan. In the event that the target offering amount is not
9 raised by the stated deadline in the disclosure statement, all
10 subscribed funds will be returned to investors.

11 B. A segregated account may be used in lieu of an escrow
12 account if the maximum offering amount is One Million Dollars
13 (\$1,000,000.00) or less.

14 C. For purposes of this section:

15 1. An "escrow account" is one administered by an independent
16 escrow agent who is a bank or other depositor institution; and

17 2. A "segregated account" is an account established by a
18 registered broker-dealer or registered crowdfunding portal pursuant
19 to a written agreement (Segregated Account Agreement) with the
20 issuer and provides that the registered broker-dealer or registered
21 portal will act on behalf of the issuer and investors to hold funds
22 raised from investors in a specific securities offering until such
23 time as those funds can be disbursed in accordance with subsection A
24 of this section. The Segregated Account Agreement must identify the

1 bank or other depository or financial institution and account number
2 where the funds will be held. All signatories on the Segregated
3 Account Agreement must be persons registered with the Department as
4 an agent of a registered broker-dealer or registered portal.

5 D. The escrow account or segregated account must be held at a
6 bank, depository or other financial institution authorized to do
7 business in the State of Oklahoma and subject to regulation under
8 the laws of the United States or under the laws of the State of
9 Oklahoma.

10 E. Each security offering shall have a dedicated segregated
11 account where a segregated account is used in lieu of an escrow
12 account. The Segregated Account Agreement entered into in
13 connection with a segregated account shall include requirements that
14 the broker-dealer or registered portal shall administer the account
15 according to the following standards:

16 1. Be responsible for prudent processing, safeguarding and
17 accounting for funds entrusted to it by investors and the issuer;

18 2. Act to the advantage of and in the best interests of the
19 investors and the issuer; and

20 3. Ensure that all requirements of the Segregated Account
21 Agreement between the broker-dealer or portal and issuer are met
22 before funds are distributed from the segregated account.

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1 F. The registered broker-dealer or registered portal shall
2 notify all prospective purchases and investors if a segregated
3 account is to be used to hold investor funds.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-806 of Title 71, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Internet website operated by a registered broker-dealer
8 or registered portal must meet the following requirements:

9 1. The website must contain a disclaimer that reflects that the
10 access to securities offerings on the website is limited to Oklahoma
11 residents and offers and sales of the securities appearing on the
12 website are limited to persons that are Oklahoma residents;

13 2. Evidence of residency within Oklahoma is required before a
14 sale may be made to a prospective purchaser. An affirmative
15 representation made by a prospective purchaser that the prospective
16 purchaser is an Oklahoma resident at least eighteen (18) years of
17 age and proof of at least one of the following shall be required as
18 evidence that the individual is a resident of Oklahoma:

- 19 a. a valid Oklahoma driver license or official
20 identification card issued by the State of Oklahoma,
- 21 b. a current Oklahoma voter registration card, or
- 22 c. county property tax records showing the individual
23 owns and occupies property in the State of Oklahoma as
24 his or her primary residence.

1 3. Prior to offering securities to residents of Oklahoma and
2 throughout the term of the offering, the registered broker-dealer or
3 registered portal shall give the Department access to the Internet
4 website.

5 B. Information about the issuer and the offering posted on the
6 Internet website shall consist of:

7 1. A copy of the disclosure statement required in Section 2 of
8 this act; and

9 2. A summary of the offering, including:

10 a. a description of the entity, its form of business,
11 principal office, history, business plan, and the
12 intended use of the offering proceeds, including
13 compensation paid to any owner, executive officer,
14 director, or manager,

15 b. the identity of the executive officers, directors, and
16 managers, including their titles and their prior
17 experience and the identity of all persons owning more
18 than twenty percent (20%) of the ownership interests
19 of any class of securities of the company, and

20 c. a description of the securities being offered and of
21 any outstanding securities of the company, the amount
22 of the offering, and the percentage ownership of the
23 company represented by the offered securities.

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1 C. The information on the Internet website required by
2 subsection B of this section must be made available to the
3 Department and potential investors for a minimum of twenty (20) days
4 ("Cooling Off Period") before any securities are sold in the
5 offering.

6 D. Prior to permitting the purchase of securities listed on the
7 Internet website, the portal shall obtain an affirmative
8 acknowledgement from the investor of the same disclosures required
9 under paragraph 11 of Section 2 of this act - Disclosure Statement.

10 SECTION 7. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1-807 of Title 71, unless there
12 is created a duplication in numbering, reads as follows:

13 A. A crowdfunding portal (Portal) must be an entity:

14 1. With its principal place of business located within the
15 State of Oklahoma;

16 2. Registered with the Secretary of State's office and
17 authorized to conduct business in Oklahoma;

18 3. Engaged exclusively in intrastate offers and sales of
19 securities in Oklahoma;

20 4. That limits its activities to operating an Internet website
21 utilized to offer and sell securities exempt from registration
22 pursuant to this act; and

23 5. Does not operate or facilitate a secondary market in
24 securities.

1 B. A crowdfunding portal must file an application for
2 registration with the Department consisting of at least the
3 following:

4 1. An application in a form and manner to be prescribed by the
5 Department, including any applicable schedules and supplemental
6 information;

7 2. Form U-4 for each designated officer;

8 3. A copy of the articles of incorporation or organization
9 certified by the Oklahoma Secretary of State or by an officer,
10 director or partner of the applicant;

11 4. Any other information deemed necessary by the Department to
12 determine the financial responsibility, business repute, or
13 qualifications of the portal; and

14 5. The appropriate registration fee(s).

15 C. Registration as a portal expires at the close of the
16 calendar year, but subsequent registration for the succeeding year
17 shall be issued upon written application and upon payment of the
18 appropriate renewal fee(s).

19 D. Prohibited Activities - A crowdfunding portal shall not:

20 1. Offer investment advice or recommendations;

21 2. Compensate employees, agents, or other persons not
22 registered with the Securities Commissioner for soliciting offers or
23 sales of securities displayed or referenced on its platform or
24 portal;

1 3. Hold, manage, possess or otherwise handle investor funds or
2 securities, except through the use of a segregated account if
3 permitted under Section 5 of this act (relating to Intrastate
4 Crowdfunding Exemption);

5 4. Be affiliated with or under common control with an issuer
6 whose securities appear on the Internet website;

7 5. Hold a financial interest in any issuer offering securities
8 on the portal's Internet website; or

9 6. Receive a financial interest in an issuer as compensation
10 for services provided to or on behalf of an issuer.

11 E. Prior to offering securities to residents of Oklahoma, the
12 crowdfunding portal shall conduct a reasonable investigation of the
13 background and regulatory history of each issuer whose securities
14 are offered on the portal's Internet website and of each of the
15 issuer's control persons. "Control persons", for purposes of this
16 subsection, means the issuer's officers, directors, or other persons
17 having the power, directly or indirectly, to direct the management
18 or policies of the issuer, whether by contract or otherwise, and
19 persons holding more than twenty percent (20%) of the outstanding
20 equity of the issuer. The portal must deny an issuer access to its
21 Internet website if the portal has a reasonable basis for believing
22 that:

23 1. The issuer or any of its control persons is subject to a
24 disqualification under applicable law;

1 2. The issuer has engaged in, is engaging in, or the offering
2 involves any act, practice, or course of business that will,
3 directly or indirectly, operate as a fraud or deceit upon any
4 person; or

5 3. It cannot adequately or effectively assess the risk of fraud
6 by the issuer or its potential offering.

7 SECTION 8. This act shall become effective November 1, 2019.

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