

1 **SENATE FLOOR VERSION**

2 February 14, 2023

3 **AS AMENDED**

4 SENATE BILL NO. 1091

5 By: Floyd

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

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

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

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

20 B. There are hereby created the Oklahoma Securities Commission
21 and the Department of Securities. The Commission shall be the
22 policy making and governing authority of the Department, shall
23 appoint the Administrator and shall be responsible for the
24 enforcement of the Oklahoma Uniform Securities Act of 2004.

25 C. 1. The Commission shall consist of ~~four (4) members to~~ **five**
(5) members, including the State Banking Commissioner who shall

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

17 2. Except for appointment of the member engaged in the
18 securities industry as provided for in subsection C of this section,
19 no person may be appointed to or by the Commission while such person
20 is registered as a broker-dealer, agent, investment adviser, or
21 investment adviser representative under the Oklahoma Uniform
22 Securities Act of 2004, or while he or she is an officer, director,
23 or partner of any person so registered, or while he or she is an
24 officer, director, or partner of an issuer which has a registration

1 statement effective under the Oklahoma Uniform Securities Act of
2 2004, or while he or she is occupying a similar status or performing
3 similar functions.

4 3. The member appointed as a representative of the securities
5 industry shall:

6 a. be currently registered as an agent, investment
7 adviser, or investment adviser representative under
8 the requirements of this title,

9 b. have at least ten (10) years of experience in the
10 industry immediately preceding appointment, and

11 c. have not been subject to a regulatory action requiring
12 disclosure on the uniform applications for
13 registration for agents, investment advisers, or
14 investment adviser representatives.

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

18 4. It is unlawful for any member of the Commission, the
19 Administrator, or any other officer or employee of the Department to
20 use for personal benefit any information which is filed with or
21 obtained by the Administrator and which is not made public. No
22 provision of the Oklahoma Uniform Securities Act of 2004 authorizes
23 any member of the Commission, the Administrator or any other officer
24 or employee of the Department to disclose any such information

1 except among themselves or when necessary or appropriate in a
2 proceeding or investigation under the Oklahoma Uniform Securities
3 Act of 2004 or in connection with a proceeding or investigation
4 conducted by any state, federal or foreign law enforcement agency,
5 securities agency or self-regulatory organization. No provision of
6 the Oklahoma Uniform Securities Act of 2004 either creates or
7 derogates from any privilege which exists at common law or otherwise
8 when documentary or other evidence is sought under a subpoena
9 directed to any member of the Commission, the Administrator or any
10 other officer or employee of the Department.

11 ~~4.~~ 5. Except on proof of corruption, no Commissioner shall for
12 his or her acts or failure to act be civilly liable to any investor,
13 applicant for registration, or any other person.

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

21 E. The Commission shall select a chair and is hereby authorized
22 to adopt rules for conducting its proceedings. Any three members
23 shall constitute a quorum for transacting Commission business. The
24 Commission shall meet bimonthly on such date as it may designate and

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

22 F. The Commission shall appoint a full-time Administrator, who
23 shall serve at the pleasure of the Commission. The Administrator
24 shall administer the Oklahoma Uniform Securities Act of 2004 under

1 the supervision of the Commission and in accordance with its
2 policies.

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

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

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

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

22 I. Before assuming office, the Administrator shall give a bond
23 in the sum of Fifty Thousand Dollars (\$50,000.00) payable to the
24 State of Oklahoma, to be approved by the Attorney General of the

1 State of Oklahoma, conditioned that he or she will faithfully
2 execute the duties of the office. The Administrator may by rule or
3 order require any employee of the Department to be bonded on the
4 same condition and in the same or such lesser amount as he or she
5 determines. The expense of all such bonds shall be paid from funds
6 available to the Department.

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

- 12 a. registration of broker-dealers, agents, investment
- 13 advisers, and investment adviser representatives,
- 14 b. registration of securities,
- 15 c. investigation and enforcement, and
- 16 d. investor education.

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

- 20 a. informing investors of all rights and remedies
- 21 available under this act,
- 22 b. informing investors of the availability of private
- 23 dispute resolution, including arbitration and
- 24

1 mediation, as an alternative to other courses of
2 action,

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

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

9 Nothing in this subsection shall authorize any employee of the
10 Department to represent the interests of, or to serve as counsel
11 for, investors in any proceeding or action to include an
12 administrative or civil proceeding brought by the Department or the
13 Securities and Exchange Commission, a proceeding brought by the
14 ~~National Association of Securities Dealers, Inc.~~ Financial Industry
15 Regulatory Authority, Inc., or an arbitration or mediation
16 proceeding. Further, no employee of the Department may advise any
17 person about the value of securities or as to the advisability of
18 investing in, purchasing or selling securities, or as to the value
19 or merits of pursuing a particular course of action.

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

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

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

19 M. 1. Neither the Administrator nor any employee of the
20 Department, during their respective terms of employment, shall serve
21 as a director, officer, shareholder, member, partner, agent or
22 employee of any person who, during the period of such
23 Administrator's or employee's employment with the Department:
24

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

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

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

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

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

20 b. such securities are held or purchased through a
21 management account or trust administered by a bank or
22 trust company authorized to do business in this state
23 that has sole investment discretion regarding the
24 holding, purchasing or selling of such securities and

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

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

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

1 Administrator to require participation or monetary contributions of
2 a registrant in an investor education program.

3 SECTION 2. This act shall become effective November 1, 2023.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
5 February 14, 2023 - DO PASS AS AMENDED
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