

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 843

By: Dahm

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6 AS INTRODUCED

7 An Act relating to transactions; clarifying status of
8 open blockchain tokens under certain conditions;
9 stating conditions when a person is not considered a
10 broker-dealer; stating entity authorized to determine
11 compliance; providing method of notice and intent to
12 facilitate certain exchanges; defining terms; stating
13 exemptions from this act; specifying conditions for
14 cease and desist orders; authorizing certain persons
15 to petition district court; stating timeframe for
16 certain enforcement; providing for codification; and
17 providing an effective date.

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

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

22 A. Except as otherwise provided by subsection C of this
23 section, a developer or seller of an open blockchain token shall not
24 be deemed the issuer of a security if all of the following are met:

25 1. The developer or seller of the token, or the registered
26 agent of the developer or seller, files a notice of intent with the
27 secretary of state, as specified in subsection D of this section;

1 2. The purpose of the token is for a consumptive purpose, which
2 shall only be exchangeable for, or provided for the receipt of,
3 goods, services or content, including rights of access to goods,
4 services or content; and

5 3. The developer or seller of the token did not sell the token
6 to the initial buyer as a financial investment. This paragraph
7 shall only be satisfied if:

8 a. the developer or seller did not market the token as a
9 financial investment, and

10 b. at least one (1) of the following is true:

11 (1) the developer or seller of the token reasonably
12 believed that it sold the token to the initial
13 buyer for a consumptive purpose,

14 (2) the token has a consumptive purpose that is
15 available at the time of sale and can be used at
16 or near the time of sale for use for a
17 consumptive purpose,

18 (3) if the token does not have a consumptive purpose
19 available at the time of sale, the initial buyer
20 of the token is prevented from reselling the
21 token until the token is available for use for a
22 consumptive purpose, or

1 (4) the developer or seller takes other reasonable
2 precautions to prevent buyers from purchasing the
3 token as a financial investment.

4 B. Except as otherwise provided by subsection C of this
5 section, a person who facilitates the exchange of an open blockchain
6 token shall not be deemed a broker-dealer or a person who otherwise
7 deals in securities under this chapter if all of the following are
8 met:

9 1. The person, or the registered agent of the person, files a
10 notice of intent with the Administrator, as specified in subsection
11 D of this section;

12 2. The person has a reasonable and good faith belief that a
13 token subject to exchange conforms to the requirements of paragraphs
14 1, 2 and 3 of subsection A of this section; and

15 3. The person takes reasonably prompt action to terminate the
16 exchange of a token that does not conform to the requirements of
17 this subsection.

18 C. The Administrator of the Oklahoma Securities Commission
19 shall have the authority to determine compliance with the provisions
20 of this section, including whether a person qualifies for the
21 exemptions set forth in this section. The evidentiary burdens shall
22 apply in any proceeding initiated by the Administrator pursuant to
23 this subsection.

1 D. A developer, seller or a person who facilitates the exchange
2 of an open blockchain token, or the registered agent of the
3 applicable person, shall electronically file a notice of intent with
4 the Administrator before the person shall qualify for an exemption
5 under this section. The notice of intent shall contain the name of
6 the person acting as a developer, seller or facilitator, the contact
7 information of the person or the registered agent of the person and
8 specify whether the person will be acting as a developer, seller or
9 facilitator. A secure form shall be made available by the office of
10 the secretary of state on its internet website for this purpose.

11 E. As used in this section, "open blockchain token" means a
12 digital unit which is:

13 1. Created:

14 a. in response to the verification or collection of a
15 specified number of transactions relating to a digital
16 ledger or database,

17 b. by deploying computer code to a blockchain network
18 that allows for the creation of digital tokens or
19 other units, or

20 c. using any combination of the methods specified in
21 subparagraphs a and b of this paragraph;

22 2. Recorded in a digital ledger or database which is
23 chronological, consensus-based, decentralized and mathematically
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1 verified in nature, especially relating to the supply of units and
2 their distribution; and

3 3. Capable of being traded or transferred between persons
4 without an intermediary or custodian of value.

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

8 As used in this act, unless the context otherwise requires:

9 1. "Broker-dealer" means a person engaged in the business of
10 effecting transactions in securities for the account of others or
11 for the person's own account. The term does not include:

- 12 a. an international banking institution, or
- 13 b. a person excluded by rule adopted or order issued
14 under this act, or
- 15 c. a person who facilitates the exchange of an open
16 blockchain token, as defined by Section 1 of this act;

17 2. "Common enterprise" means an enterprise in which the
18 fortunes of the investor are interwoven with those of either the
19 person offering the investment, a third party, or other investors
20 and includes as an "investment contract," among other contracts, an
21 interest in a limited partnership and a limited liability company
22 and an investment in a viatical settlement or similar agreement and
23 does not include an open blockchain token, as defined by Section 1
24 of this act;

1 3. "Investment contract" means an investment in a common
2 enterprise with the expectation of profits to be derived primarily
3 from the efforts of a person other than the investor;

4 4. "Issuer" means a person that issues or proposes to issue a
5 security, subject to Section 1 of this act; and

6 5. "Security" means a note, stock, treasury stock, security
7 future, bond, debenture, evidence of indebtedness, certificate of
8 interest or participation in a profit-sharing agreement, collateral
9 trust certificate, preorganization certificate or subscription,
10 transferable share, investment contract, voting trust certificate,
11 certificate of deposit for a security, put, call, straddle, option,
12 or privilege on a security, certificate of deposit, or group or
13 index of securities, including an interest therein or based on the
14 Thereof, put, call, straddle, option, or privilege entered into on a
15 national securities exchange relating to foreign currency, or, in
16 general, an interest or instrument commonly known as a "security" or
17 a certificate of interest or participation in, temporary or interim
18 certificate for, receipt for, guarantee of, or warrant or right to
19 subscribe to or purchase, any of the foregoing.

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

23 This act shall not apply to:
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1 1. Banks, bank holding companies, credit unions, building and
2 loan associations, savings and loan associations, savings banks or
3 mutual banks organized under the laws of any state or the United
4 States provided that they do not issue or sell payment instruments
5 through authorized delegates or subdelegates who are not banks, bank
6 holding companies, credit unions, building and loan associations,
7 savings and loan associations, savings banks or mutual banks; and

8 2. Electronic transfer of government benefits for any federal,
9 state or county governmental agency as defined in Federal Reserve
10 Board Regulation E by a contractor for and on behalf of the United
11 States or any department, agency or instrumentality thereof, or any
12 state or any political subdivisions thereof; or

13 3. A person who develops, sells or facilitates the exchange of
14 an open blockchain token, as defined by Section 1 of this act.

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

18 A. If the Administrator of the Oklahoma Securities Commission
19 has reason to believe a person is engaged in or is about to engage
20 in any activity which would be subject to this act but for an
21 exemption asserted pursuant to Section 3 of this act, and the
22 Administrator has reason to believe the requirements of Section 3 of
23 this act have not been met, the Administrator may issue an order to
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1 show cause why an order to cease and desist the activity should not
2 issue.

3 B. In an emergency, the Administrator may petition the district
4 court for the issuance of a temporary restraining order.

5 C. An order to cease and desist becomes effective upon service
6 upon the person.

7 D. An order to cease and desist remains effective and
8 enforceable pending the completion of an administrative proceeding
9 as may be provided by law.

10 E. A person served with an order to cease and desist may
11 petition the district court for a judicial order setting aside,
12 limiting, or suspending the enforcement, operation, or effectiveness
13 of the order pending the completion of an administrative proceeding.

14 F. The Administrator shall commence a contested case proceeding
15 within twenty (20) days after issuing an order to cease and desist.

16 SECTION 5. This act shall become effective November 1, 2019.

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