

OKLAHOMA STATUTES
TITLE 71. SECURITIES

§71-1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	5
§71-1-101. Short title.....	5
§71-1-102. Definitions.....	5
§71-1-103. References to federal statutes.....	14
§71-1-104. References to federal agencies.....	14
§71-1-105. Electronic records and signatures.....	14
§71-1-201. Exempt securities.....	15
§71-1-202. Exempt transactions.....	17
§71-1-203. Additional exemptions and waivers.....	24
§71-1-204. Denial, suspension of application, revocation, condition, or limitation of exemptions.....	24
§71-1-301. Securities registration requirement.....	25
§71-1-302. Federal covered security - Notice filing.....	25
§71-1-303. Securities registration by coordination.....	26
§71-1-304. Securities registration by qualification.....	27
§71-1-305. Registration filings.....	31
§71-1-306. Denial, suspension, or revocation of effectiveness of registration statement.....	33
§71-1-307. Waiver or modification.....	35
§71-1-308. Investment certificate issuers - Registration requirements.....	35
§71-1-401. Broker-dealer registration requirement and exemptions.....	40
§71-1-402. Agent registration requirement and exemptions.....	42
§71-1-403. Investment adviser registration requirement and exemptions.....	44
§71-1-404. Investment adviser representative registration requirement and exemptions.....	45
§71-1-405. Federal covered investment adviser registration requirement and exemptions.....	46
§71-1-406. Registration application - Time of becoming effective.....	47
§71-1-407. Succession and change in registration of broker-dealer or investment adviser.....	48
§71-1-408. Termination of employment or association of agent and investment adviser representative - Transfer of employment or association.....	48
§71-1-409. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.....	50
§71-1-410. Postregistration requirements.....	50
§71-1-411. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.....	52
§71-1-501. General fraud.....	56
§71-1-502. Prohibited conduct in providing investment advice.....	56
§71-1-503. Evidentiary burden.....	57
§71-1-504. Filing of sales and advertising literature.....	57
§71-1-505. Misleading filings.....	58
§71-1-506. Misrepresentations concerning registration or exemption.....	58
§71-1-507. Qualified immunity.....	58
§71-1-508. Violations - Criminal penalties - Administrative fines.....	59
§71-1-509. Civil liability.....	59
§71-1-510. Rescission offers.....	62
§71-1-601. Administration.....	64
§71-1-602. Investigations and subpoenas.....	69
§71-1-603. Civil enforcement.....	71
§71-1-604. Administrative enforcement.....	72
§71-1-605. Rules, forms, orders, interpretative opinions, and hearings.....	74
§71-1-606. Administrative files and opinions.....	75
§71-1-607. Public records - Confidentiality.....	75
§71-1-608. Uniformity and cooperation with other agencies.....	77
§71-1-609. Commission review of order - Judicial review.....	78
§71-1-610. Jurisdiction.....	79

§71-1-611. Service of process.....	80
§71-1-612. Fees.....	81
§71-1-613. Availability of data for supervision of personnel - Sharing of data - Confidentiality.....	85
§71-1-701. Application of act to existing proceedings and rights.....	86
§71-2. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-3. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-4. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-5. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-6. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-7. Repealed by Laws 1985, c. 178, § 81, operative July 1, 1985.....	87
§71-8. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-9. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-10. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-11. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-12. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-13. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	87
§71-14. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	88
§71-15. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.....	88
§71-16. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	88
§71-17. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	88
§71-101. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	88
§71-102. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	88
§71-103. Repealed by Laws 1995, c. 196, § 20, eff. July 1, 1995.....	88
§71-201. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	88
§71-202. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	93
§71-202.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	94
§71-203. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	94
§71-204. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	94
§71-301. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	98
§71-302. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	98
§71-303. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	98
§71-304. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	98
§71-304.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	98
§71-305. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	98
§71-305.1. Repealed by Laws 1987, c. 208, § 120, operative July 1, 1987 and Laws 1987, c. 236, § 203, emerg. eff. July 20, 1987.....	98
§71-305.2. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	98
§71-306. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	98
§71-307. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	102
§71-401. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	102
§71-402. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	102
§71-403. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	102
§71-404. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	102
§71-405. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	102
§71-406. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	103
§71-406.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	106
§71-407. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	107
§71-408. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	107
§71-409. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	107
§71-410. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	108
§71-411. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	108
§71-411.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	108
§71-412. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	108

§71-412.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	112
§71-413. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	112
§71-414. Definitions.....	112
§71-415. Public announcement of take-over bid - Filing of required information - Hearings - Information to be filed - Costs.....	113
§71-416. Statutory procedure must be followed.....	116
§71-417. Discrimination prohibited.....	116
§71-418. Copies of information to be filed with certain regulatory bodies.....	117
§71-419. Liabilities, remedies and penalties.....	117
§71-420. Rules and regulations.....	117
§71-421. Exemptions.....	117
§71-431. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-432. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-433. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-434. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-435. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-436. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-437. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-438. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-439. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-440. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-441. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	118
§71-442. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	119
§71-443. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	119
§71-444. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	119
§71-445. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	119
§71-446. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	119
§71-447. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	119
§71-448. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	119
§71-449. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	119
§71-450. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.....	119
§71-451. Short title.....	119
§71-452. Definitions.....	119
§71-453. Effective take-over offer required - Registration statement - Suspension of take-over offer and hearing.....	121
§71-454. Solicitation materials - Filing - Prohibited use.....	125
§71-455. Fraudulent, deceptive and manipulative acts prohibited.....	125
§71-456. Actions of offeror - Limitations.....	126
§71-457. Powers of Administrator - Rules and forms - Exemptions from act.....	126
§71-458. Registration fee.....	127
§71-459. Violations - Cease and desist orders - Injunctions.....	127
§71-460. Violations - Penalty - Evidence.....	127
§71-461. Liability of offeror - Rights and remedies of seller.....	128
§71-462. Application of provisions of Oklahoma Securities Act.....	129
§71-501. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	129
§71-502. Repealed by Laws 1989, c. 154, § 2, operative July 1, 1989.....	129
§71-503. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.....	129
§71-504. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.....	129
§71-601. Citation.....	129
§71-602. Definitions.....	130
§71-621. Registration - Violations.....	131
§71-622. Exemptions.....	132
§71-623. Additional exemptions.....	132

§71-624. Burden of proof.....	133
§71-625. Application for registration.....	133
§71-626. Public offering statements - Contents - Violations - Uses.....	136
§71-627. Orders - Application for registration - Filing of documents and information.....	138
§71-628. Denial of effectiveness to, suspension or revocation of effectiveness of registration.....	140
§71-631. Licenses - Exemptions - Term - Suspension, revocation or denial.....	142
§71-632. Application for license.....	142
§71-633. Records - Copies - Inspection - Reports - Examination - Rules and regulations.....	143
§71-634. Denial, revocation or suspension of license.....	144
§71-641. Fraud - Penalty.....	146
§71-642. Liens and encumbrances.....	146
§71-643. Contracts - Voiding - Rescinding - Revoking.....	146
§71-644. Notice to purchaser - Signatures - Rescission of contract.....	147
§71-651. Administration of Code - Personal use of information - Privileges and immunities.....	147
§71-652. Fees - Disposition.....	148
§71-653. Advertising.....	149
§71-654. Fraud - Filing of documents and information.....	150
§71-655. Presumptions - Fraud - Violations.....	150
§71-656. Power and duties of Administrator.....	150
§71-657. Injunctions - Intervention in suits involving subdivided land.....	151
§71-658. Violation of Code - Fine.....	152
§71-659. Liability to purchaser - Persons liable - Limitation of actions.....	152
§71-660. Summary prohibition of offers or dispositions.....	154
§71-661. Review of orders.....	154
§71-662. Rules, forms and orders - Making, amending or rescinding - Exemption from liability.....	155
§71-663. Filing of documents - Register - Inspection - Copies - Interpretative opinions.....	156
§71-664. Consent to service of process - Service.....	156
§71-665. Dispositions and offers - Application of law - Acceptance.....	157
§71-666. Liens and encumbrances.....	158
§71-667. Construction of act.....	158
§71-701. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	158
§71-702. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	158
§71-703. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.....	158
§71-801. Short title.....	158
§71-802. Definitions.....	158
§71-803. Exemptions.....	161
§71-804. Denial or revocation of exemption - Orders and violation thereof.....	163
§71-805. Burden of proving exemption.....	165
§71-806. Certain sales unlawful.....	165
§71-807. Registration procedure.....	166
§71-808. Disclosure document.....	167
§71-809. Contracts or agreements required - Contents.....	170
§71-810. Suspension or revocation of registration - Grounds - Procedure.....	171
§71-811. Minimum net worth requirement.....	173
§71-812. Administration of act - Use of disclosure of information.....	173
§71-813. Investigations and proceedings - Powers and duties of Administrator.....	174
§71-814. Violation of act - Orders - Penalties.....	175
§71-815. Review of orders.....	177
§71-816. Rules, forms and orders - Making, amending and rescinding.....	178
§71-817. Document filed when received by Administrator - Register of applications and orders - Disclosure - Interpretive opinions.....	179
§71-818. Application of act - Offer to sell, communication thereof and acceptance - Service of process and agent therefor.....	180

§71-819. Fraud or deceit unlawful.....	182
§71-820. False or misleading statements unlawful.....	182
§71-821. Conclusiveness of filed document.....	182
§71-822. Misleading advertising unlawful.....	183
§71-823. Violations - Penalty - Criminal prosecutions.....	183
§71-824. Violations - Civil actions.....	184
§71-825. Aiding and abetting violation.....	184
§71-826. Limitation of actions - Remedies not exclusive - Waiver of compliance, duty or liability void.	184
§71-827. Construction of act.....	185
§71-828. Oklahoma Securities Act - Application.....	185
§71-829. Fees and charges - Deposits.....	185
§71-901. Short title.....	185
§71-902. Definitions.....	185
§71-903. Rules governing registration in beneficiary form.....	187
§71-904. Applicable law.....	187
§71-905. Origination of registration in beneficiary form.....	187
§71-906. Form of registration.....	187
§71-907. Effect of registration.....	188
§71-908. Ownership on death - Rights of creditors.....	188
§71-909. Protections for registering entity.....	189
§71-910. Nonprobate transfer - Liability of transferees.....	190
§71-911. Terms, conditions and form for registration.....	191
§71-912. Construction.....	192
§71-913. Application.....	192

§71-1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-1-101. Short title.

This act shall be known and may be cited as the "Oklahoma Uniform Securities Act of 2004".

Added by Laws 2003, c. 347, § 1, eff. July 1, 2004.

§71-1-102. Definitions.

In this act, unless the context otherwise requires:

1. "Administrator" means the securities Administrator appointed by the Oklahoma Securities Commission;
2. "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act;
3. "Bank" means:
 - a. a banking institution organized under the laws of the United States,

- b. a member bank of the Federal Reserve System,
- c. any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this act, and
- d. a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph a, b or c of this paragraph;

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

- a. an agent,
- b. an issuer,
- c. a bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4)),
- d. an international banking institution, or
- e. a person excluded by rule adopted or order issued under this act;

5. "Commission" means the Oklahoma Securities Commission;

6. "Department" means the Oklahoma Department of Securities;

7. "Depository institution" means:

- a. a bank, or
- b. a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

- (1) an insurance company or other organization primarily engaged in the business of insurance,
- (2) a Morris Plan bank, or
- (3) an industrial loan company;

8. "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940;

9. "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision;

10. "Filing" means the receipt under this act of a record by the Administrator or a designee of the Administrator;

11. "Fraud," "deceit," and "defraud" are not limited to common law deceit;

12. "Guaranteed" means guaranteed as to payment of all principal and all interest;

13. "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

- a. a depository institution or international banking institution,
- b. an insurance company,
- c. a separate account of an insurance company,
- d. an investment company as defined in the Investment Company Act of 1940,
- e. a broker-dealer registered under the Securities Exchange Act of 1934,
- f. an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of Ten Million Dollars (\$10,000,000.00) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company,
- g. a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of Ten Million Dollars (\$10,000,000.00) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934,

- an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company,
- h. a trust, if it has total assets in excess of Ten Million Dollars (\$10,000,000.00), its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph f or g of this paragraph, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans,
 - i. an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of Ten Million Dollars (\$10,000,000.00),
 - j. a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of Ten Million Dollars (\$10,000,000.00),
 - k. a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of Ten Million Dollars (\$10,000,000.00),
 - l. a federal covered investment adviser acting for its own account,
 - m. a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A),
 - n. a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6),
 - o. any other person, other than an individual, of institutional character with total assets in excess of Ten Million Dollars (\$10,000,000.00) not organized for the specific purpose of evading this act, or
 - p. any other person specified by rule adopted or order issued under this act;

14. "Insurance company" means a company organized as an insurer whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and that are subject to supervision by the insurance commissioner or a similar official or agency of a state;

15. "Insured" means insured as to payment of all principal and all interest;

16. "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933;

17. "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

- a. an investment adviser representative,
- b. a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession,
- c. a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice,
- d. a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation,
- e. a depository institution, or
- f. any other person excluded by rule adopted or order issued under this act;

18. "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

- a. performs only clerical or ministerial acts,
- b. is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services, or

c. is excluded by rule adopted or order issued under this act;

19. "Issuer" means a person that issues or proposes to issue a security, subject to the following:

- a. the issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued,
- b. the issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property or equipment is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate,
- c. the issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale;

20. "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer;

21. "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d));

22. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

23. "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

- a. an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients, or

- b. any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients;

24. "Predecessor act" means the act repealed by Section 53 of this act;

25. "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price;

26. "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser;

27. "Promoter" includes:

- a. a person who, acting alone or in concert with one or more persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer,
- b. an officer or director owning securities of an issuer or a person who owns, beneficially or of record, ten percent (10%) or more of a class of securities of the issuer if the officer, director, or person acquires any of those securities in a transaction within three (3) years before the filing by the issuer of a registration statement under this act and the transaction is not an arms-length transaction, or
- c. a member of the immediate family of a person within subparagraph a or b of this paragraph if the family member receives securities of the issuer from that person in a transaction within three (3) years before the filing by the issuer of a registration statement under this act and the transaction is not an arms-length transaction.

For purposes of this subsection, "immediate family" means a spouse of a person within subparagraph a or b of this paragraph, an emancipated child residing in such person's household, or an individual claimed as a dependent by such person for tax purposes;

28. "Record" except in the phrases "of record," "official record," and "public record," means information that is inscribed on

a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

29. "Registration statement" means the documentation provided to the Securities and Exchange Commission or the Department in connection with the registration of securities under the Securities Act of 1933 or this title and includes any amendment thereto and any report, document, exhibit or memorandum filed as part of such statement or incorporated therein by reference;

30. "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

- a. a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value,
- b. a gift of assessable stock involving an offer and sale, and
- c. a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security;

31. "Securities and Exchange Commission" means the United States Securities and Exchange Commission;

32. "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

- a. includes both a certificated and an uncertificated security,
- b. does not include an insurance or endowment policy or annuity contract under which an insurance company

- promises to pay a sum of money either in a lump sum or periodically for life or other specified period,
- c. does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974,
 - d. includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors,
 - e. includes as an "investment contract," among other contracts, an interest in a limited partnership and a third party managed limited liability company and an investment in a viatical or life settlement or similar contract or agreement,
 - f. includes an investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of some benefit to the investor where the investor has no direct control over the investment or policy decision of the venture, and
 - g. does not include an interest in an oil, gas or mineral lease as part of a transaction between parties, each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business or the execution of oil and gas leases by land, mineral and royalty owners in favor of a party or parties engaged in the business of exploring for or producing oil and gas or other valuable minerals;

33. "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

34. "Sign" means, with present intent to authenticate or adopt a record:

- a. to execute or adopt a tangible symbol, or
- b. to attach or logically associate with the record an electronic symbol, sound, or process;

35. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

36. "Underwriter" means any person who has purchased from an issuer or from any other person with a view to, or offers or sells for an issuer or for any other person in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. "Underwriter" does not include a person whose interest is limited to a commission from an underwriter or broker-dealer not in excess of the usual and customary distributor's or seller's commission.

Added by Laws 2003, c. 347, § 2, eff. July 1, 2004.

§71-1-103. References to federal statutes.

"Securities Act of 1933" (15 U.S.C. Section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. Section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001 et seq.), "National Housing Act" (12 U.S.C. Section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1 et seq.), "Internal Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this act, or as later amended.

Added by Laws 2003, c. 347, § 3, eff. July 1, 2004.

§71-1-104. References to federal agencies.

A reference in this act to an agency or department of the United States is also a reference to a successor agency or department.

Added by Laws 2003, c. 347, § 4, eff. July 1, 2004.

§71-1-105. Electronic records and signatures.

This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This Act authorizes the filing of records and signatures, when specified by provisions of this act or by a rule adopted or order issued under this act, in a manner consistent with Section 104(a) of that act (15 U.S.C. Section 7004(a)).

Added by Laws 2003, c. 347, § 5, eff. July 1, 2004.

§71-1-201. Exempt securities.

The following securities are exempt from the requirements of Sections 10 and 32 of this act:

1. A security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing; however, notwithstanding the provisions of Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law 98-440, any security that is offered and sold pursuant to Section 4(5) of the Securities Act of 1933 or that is a mortgage related security as that term is defined in Section 3(a)(41) of the Securities Exchange Act of 1934 shall not be exempt from Sections 10 and 32 of this act by virtue of such Secondary Mortgage Market Enhancement Act but may be exempt based upon the availability of the exemptions from registration provided for in this section;

2. A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

3. A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

- a. an international banking institution,
- b. a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a),
- c. a trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the Comptroller of the Currency and is

supervised and examined by an official or agency of a state or the United States, or

d. any other depository institution;

4. A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to transact insurance business in this state by the Insurance Commissioner;

5. A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

a. regulated in respect to its rates and charges by the United States or a state,

b. regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory, or

c. a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

6. A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this act; a put or a call option contract, a warrant, or a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or the underlying security in connection with the offer, sale, or exercise of an option or other derivative security that was exempt when the option or other derivative security was written or issued; or an option or other derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

7. A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this act limiting the availability of

this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to subparagraph b of this paragraph the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 49 of this act, and the grounds for denial or suspension, and requiring an issuer:

- a. to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and providing that the exemption becomes effective if the Administrator does not disallow the exemption within the period established by the rule,
- b. to file a request for exemption, or
- c. to register under Section 13 of this act;

8. A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a not for profit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and

9. An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

Added by Laws 2003, c. 347, § 6, eff. July 1, 2004.

§71-1-202. Exempt transactions.

The following transactions are exempt from the requirements of Sections 10 and 32 of this act:

1. An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;
2. A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this act, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:
 - a. the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or

- combination of the business with, or an acquisition of, an unidentified person,
- b. the security is sold at a price reasonably related to its current market price,
 - c. the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution, and
 - d. a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this act or a record filed with the Securities and Exchange Commission that is publicly available contains:
 - (1) a description of the business and operations of the issuer,
 - (2) the names of the issuer's executive officers and the names of the issuer's directors, if any,
 - (3) an audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization, and
 - (4) an audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement, or
 - e. the issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; or the issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or the issuer of the security has total assets of at least Two Million Dollars (\$2,000,000.00) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger

each had the audited balance sheet, a pro forma balance sheet for the combined organization;

3. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

4. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

5. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security that:

- a. is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories, or
- b. has a fixed maturity or a fixed interest or dividend, if:
 - (1) a default has not occurred during the current fiscal year or within the three (3) previous fiscal years or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security, and
 - (2) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

6. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act effecting an unsolicited order or offer to purchase;

7. A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this act;

8. A nonissuer transaction by a federal covered investment adviser with investments under management in excess of One Hundred Million Dollars (\$100,000,000.00) acting in the exercise of discretionary authority in a signed record for the account of others;

9. A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona

vide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the Administrator after a hearing;

10. A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

11. A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

- a. the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit,
- b. a general solicitation or general advertisement of the transaction is not made, and
- c. a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this act as a broker-dealer or as an agent;

12. A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

13. A sale or offer to sell to:

- a. an institutional investor,
- b. a federal covered investment adviser, or
- c. any other person exempted by rule adopted or order issued under this act;

14. A sale or an offer to sell securities by an issuer, if the transaction is part of a single issue in which:

- a. not more than twenty-five purchasers during any twelve (12) consecutive months, other than those designated in paragraph 13 of this section,
- b. a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities,
- c. a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state, and
- d. the issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph 13 of this section, are purchasing for investment;

15. A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if:

- a. no commission or other remuneration, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state, or
- b. the issuer first files a notice specifying the terms of the offer and the Administrator, by order, does not disallow the exemption within the next ten (10) full business days;

16. A sale from or in this state to not more than thirty-two persons of a unit consisting of interests in oil, gas or mining titles or leases or any certificate of interest or participation, or conveyance in any form of an interest therein, or in payments out of production pursuant to such titles or leases, whether or not offered in conjunction with, or as an incident to, an operating agreement or other contract to drill oil or gas wells or otherwise exploit the minerals on the particular leases, whether or not the seller or any buyers are then present in this state, if:

- a. the seller reasonably believes that all buyers are purchasing for investment,
- b. no commission is paid or given directly or indirectly for the solicitation of any such sale excluding any commission paid or given by and between parties each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals,
- c. no public advertising or public solicitation is used in any such solicitation or sale, and
- d. sales are effected only to persons the seller has reasonable cause to believe are capable of evaluating the risk of the prospective investment and able to bear the economic risk of the investment; but the Administrator, by rule or order, as to any specific transaction, may withdraw or further condition this exemption or decrease the number of sales permitted or waive the conditions in subparagraphs a, b and c of this paragraph, with or without substitution of a limitation on remuneration.

For purposes of this subsection, no units of the issuer shall be integrated; however, this exemption cannot be combined or used in conjunction with any other transactional exemption.

17. An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

- a. a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165), and

- b. no stop order of which the offeror is aware has been issued against the offeror by the Administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

18. An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

- a. a registration statement has been filed under this act, but is not effective,
- b. a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the Administrator under this act, and
- c. a stop order of which the offeror is aware has not been issued by the Administrator under this act and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

19. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties if:

- a. the securities to be distributed are registered under the Securities Act of 1933 before the vote by security holders on the transaction, or
- b. the securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited from such security holders is given to the Administrator at least ten (10) full business days before the vote by security holders on the transaction and the Administrator does not commence a proceeding to deny the exemption within the next ten (10) full business days; however, such notice shall not be required if the sole purpose of the transaction is to change an issuer's domicile solely within the United States;

20. A rescission offer, sale, or purchase under Section 38 of this act;

21. An offer or sale of a security through a broker-dealer registered under this act to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this act;

22. Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

- a. directors; general partners; trustees, if the issuer is a business trust; and officers,
- b. family members who acquire such securities from those persons through gifts or domestic relations orders,
- c. former employees, directors, general partners, trustees, and officers if those individuals were employed by or providing services to the issuer when the securities were offered, and
- d. insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations;

23. A transaction involving:

- a. a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock,
- b. an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, or
- c. the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162);
or

24. A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this act; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is

listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with the Administrative Procedures Act, the Administrator, by rule adopted or order issued under this act, may revoke the designation of a securities exchange under this paragraph, if the Administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

Added by Laws 2003, c. 347, § 7, eff. July 1, 2004.

§71-1-203. Additional exemptions and waivers.

A rule adopted or order issued under this act may exempt a security, transaction, or offer; a rule under this act may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 10 and 32 of this act; and an order under this act may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections 6 and 7 of this act.

Added by Laws 2003, c. 347, § 8, eff. July 1, 2004.

§71-1-204. Denial, suspension of application, revocation, condition, or limitation of exemptions.

A. Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this act may deny, suspend application of, condition, limit, or revoke an exemption created under subparagraph c or d of paragraph 3 of Section 6 of this act, or paragraph 7 or 8 of Section 6 of this act or Section 7 of this act or an exemption or waiver created under Section 8 of this act with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in subsection D of Section 15 or Section 42 of this act and only prospectively.

B. A person does not violate Section 10, 32 or 38 of this act by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

Added by Laws 2003, c. 347, § 9, eff. July 1, 2004.

§71-1-301. Securities registration requirement.

It is unlawful for a person to offer or sell a security in this state unless:

1. The security is a federal covered security;
2. The security, transaction, or offer is exempted from registration under Sections 6 through 8 of this act; or
3. The security is registered under this act.

Added by Laws 2003, c. 347, § 10, eff. July 1, 2004.

§71-1-302. Federal covered security - Notice filing.

A. With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(2), that is not otherwise exempt under Sections 1-201 through 1-203 of this title, the issuer shall file a notice with the Administrator prior to an offer in this state. A separate notice shall be filed for each class of an issuer's securities offered in this state. Each notice shall be for an indefinite amount of securities. A notice, or renewal thereof, shall be accompanied by the filing fee set forth in Section 1-612 of this title. The Administrator may, by rule or order, prescribe notice filing and renewal requirements, and the requirements for filing of reports of the dollar amount of securities sold or offered to be sold to persons located in this state.

B. A notice filing under subsection A of this section is effective for one (1) year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this act to be filed and by paying a renewal fee as provided in Section 1-612 of this title. A previously filed consent to service of process complying with Section 1-611 of this title may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

C. 1. With respect to a security that is a federal covered security under Section 18(b)(4)(E) of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(4)(E), a rule under this act may require a notice filing by or on behalf of an issuer as allowed by applicable federal law.

2. With respect to a security that is a federal covered security under Section 18(b)(3) or Section 18(b)(4)(D)(ii) of the Securities Act of 1933, 15 U.S.C. Sections 77r(b)(3) and 77r(b)(4)(D)(ii), a rule under this act may require a notice filing by or on behalf of an issuer as allowed by applicable federal law.

D. Except with respect to a federal covered security under Section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(1), if the Administrator finds that there is a failure to comply with a notice or fee requirement of this section, the Administrator may issue a stop order suspending the offer and sale of

a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the Administrator. Added by Laws 2003, c. 347, § 11, eff. July 1, 2004. Amended by Laws 2016, c. 107, § 1, eff. Nov. 1, 2016.

§71-1-303. Securities registration by coordination.

A. A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

B. A registration statement under this section must contain or be accompanied by the following records in addition to the information specified in Section 14 of this act and a consent to service of process complying with Section 49 of this act:

1. A copy of the latest form of prospectus filed under the Securities Act of 1933;
2. A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this act;
3. Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the Administrator; and
4. An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission and in any event not later than the first business day after the day the amendment is forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

C. A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

1. A stop order under subsection D of this section or Section 15 of this act or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Section 15 of this act; and
2. The registration statement has been on file for at least twenty (20) days or a shorter period provided by rule adopted or order issued under this act.

D. The registrant shall promptly notify the Administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the Administrator may issue a stop order, without

prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The Administrator shall promptly notify the registrant of the order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

E. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the Administrator, the registration statement is automatically effective under this act when all the conditions are satisfied or waived. If the registrant notifies the Administrator of the date when the federal registration statement is expected to become effective, the Administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the Administrator intends the institution of a proceeding under Section 15 of this act. The notice by the Administrator does not preclude the institution of such a proceeding.

Added by Laws 2003, c. 347, § 12, eff. July 1, 2004.

§71-1-304. Securities registration by qualification.

A. A security may be registered by qualification under this section.

B. A registration statement under this section must contain the information or records specified in Section 14 of this act, a consent to service of process complying with Section 49 of this act, and the following information or records:

1. With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

2. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected;

3. With respect to persons covered by paragraph 2 of this subsection, the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

4. With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information or records specified in paragraph 2 of this subsection other than the person's occupation;

5. With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in paragraph 2 of this subsection, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

6. With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering;

7. The capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two (2) years or is obligated to issue its securities;

8. The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution

is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

9. The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

10. A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph 2, 4, 5, 6 or 8 of this subsection and by any person that holds or will hold ten percent (10%) or more in the aggregate of those options;

11. The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two (2) years, and a copy of the contract;

12. A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

13. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with subparagraph b of paragraph 18 of Section 7 of this act;

14. A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

15. A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully

paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

16. A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

17. A balance sheet of the issuer as of a date within four (4) months before the filing of the registration statement; a statement of income and changes in financial position for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

18. Any additional information or records required by rule adopted or order issued under this act.

C. A registration statement under this section becomes effective thirty (30) days, or any shorter period provided by rule adopted or order issued under this act, after the date the registration statement or the last amendment other than a price amendment is filed, if:

1. A stop order is not in effect and a proceeding is not pending under Section 15 of this act;

2. The Administrator has not issued an order under Section 15 of this act postponing effectiveness; and

3. The applicant or registrant has not requested that effectiveness be delayed.

D. The Administrator may delay effectiveness once for not more than ninety (90) days if the Administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The Administrator may also delay effectiveness for a further period of not more than thirty (30) days if the Administrator determines that the delay is necessary or appropriate.

E. A rule adopted or order issued under this act may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection B of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

1. The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an

unsold allotment or subscription taken by the person as a participant in the distribution;

2. The confirmation of a sale made by or for the account of the person;

3. Payment pursuant to such a sale; or

4. Delivery of the security pursuant to such a sale.

Added by Laws 2003, c. 347, § 13, eff. July 1, 2004.

§71-1-305. Registration filings.

A. A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this act.

B. A person filing a registration statement shall pay the filing fee set forth in Section 50 of this act. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under Section 15 of this act, the Administrator shall retain the fee.

C. A registration statement filed under Section 12 or 13 of this act must specify:

1. The amount of securities to be offered in this state;

2. The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

3. Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

D. A record filed under this act or the predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

E. In the case of a nonissuer distribution, information or a record may not be required under subsection I of this section or Section 13 of this act, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

F. A rule adopted or order issued under this act may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under

this act, but the Administrator may not reject a depository institution solely because of its location in another state.

G. A rule adopted or order issued under this act may require as a condition of registration that a security registered under this act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this act or preserved for a period specified by the rule or order, which may not be longer than five (5) years.

H. Except while a stop order is in effect under Section 15 of this act, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the Administrator.

I. While a registration statement is effective, the person that filed the registration statement shall file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

J. A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the Administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee as provided in Section 50 of this act. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

K. The records of an issuer registered or required to be registered under this act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the Administrator, within or without this state, as the Administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Administrator may copy, and remove for audit or inspection copies of, all records the Administrator reasonably considers necessary or appropriate to

conduct the audit or inspection. The Administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

Added by Laws 2003, c. 347, § 14, eff. July 1, 2004.

§71-1-306. Denial, suspension, or revocation of effectiveness of registration statement.

A. The Administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the Administrator finds that the order is in the public interest and that:

1. The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under subsection J of Section 14 of this act as of its effective date, or a report under subsection I of Section 14 of this act, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

2. This act or a rule adopted or order issued under this act or a condition imposed under this act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function, a promoter of the issuer, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

3. The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this act applicable to the offering, but the Administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the Administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

4. The issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

5. With respect to a security sought to be registered under Section 12 of this act, there has been a failure to comply with the undertaking required by paragraph 4 of subsection B of Section 12 of this act;

6. The applicant or registrant has not paid the filing fee, but the Administrator shall void the order if the deficiency is corrected; or

7. The offering:

- a. will work or tend to work a fraud upon purchasers or would so operate, or
- b. has been or would be made or is being made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation; promoters' profits or participation; or unreasonable amounts or kinds of options, profits, compensation, or remuneration paid directly or indirectly to any officer, director, employee, contractor or agent.

B. To the extent practicable, the Administrator by rule adopted or order issued under this act shall publish standards that provide notice of conduct that violates paragraph 7 of subsection A of this section.

C. The Administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the Administrator when the registration statement became effective unless the proceeding is instituted within thirty (30) days after the registration statement became effective.

D. The Administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the Administrator shall promptly notify each person specified in subsection E of this section that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing and such hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a hearing is not requested and none is ordered by the Administrator, within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

E. Unless the right to notice and hearing is waived, a stop order may not be issued under this section without:

1. Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
2. An opportunity for hearing; and
3. Findings of fact and conclusions of law in a record in accordance with the Administrative Procedures Act.

F. The Administrator may modify or vacate a stop order issued under this section if the Administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

Added by Laws 2003, c. 347, § 15, eff. July 1, 2004.

§71-1-307. Waiver or modification.

The Administrator may waive or modify, in whole or in part, any or all of the requirements of Sections 11, 12, and subsection B of Section 13 of this act or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to subsection I of Section 14 of this act.

Added by Laws 2003, c. 347, § 16, eff. July 1, 2004.

§71-1-308. Investment certificate issuers - Registration requirements.

A. In addition to all other applicable registration provisions specified in this act, investment certificate issuers are subject to the provisions of this section. As used in this section:

1. "Investment certificate" means thrift certificates, certificates of deposit, savings obligations and similar certificates or obligations issued and sold by an investment certificate issuer as defined in paragraph 2 of this subsection; and

2. "Investment certificate issuer" means any financial institution or person, other than a federally or state chartered bank, bank holding company, trust company or savings and loan association, or any credit union, which accepts investor funds or deposits in exchange for the issuance of investment certificates; provided, however, the term "investment certificate issuer" shall not include a financial institution or person which, as of November 1, 1985, issued only the following securities:

- a. investment certificates exempt under the provisions of Sections 6 through 8 of this act,
- b. investment certificates registered by coordination under Section 12 of this act, or
- c. any other security as to which the Administrator, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.

Nothing contained in this act shall be construed as precluding an investment certificate issuer from qualifying for and relying upon any of the exemptions from the provisions of Sections 10 and 32 of this act as contained in Sections 6 through 8 of this act.

B. In addition to other powers conferred by this act, the Administrator shall have power to require an investment certificate issuer to:

1. Cause its books and records to be made available at its offices and to provide to the Department a trial balance within five (5) days of the commencement of any examination. The books and records shall be audited at least once each year by an independent certified public accountant in accordance with generally accepted auditing standards, and the report thereof, including financial statements prepared in accordance with generally accepted accounting principles, furnished to the Administrator in such form as he or she may require;

2. Observe methods and standards, including classification standards of loans, which the Administrator may prescribe by rule adopted and promulgated pursuant to the Administrative Procedures Act for determining the value of various types of assets;

3. Maintain its accounting systems and procedures in accordance with such regulations as adopted and promulgated by the Administrator pursuant to the Administrative Procedures Act; provided, the accounting system required shall have due regard to the size of the investment certificate issuer;

4. Charge off the whole or any part of an asset, the value of which, at the time of the Administrator's action, has deteriorated for reasons set forth by the Administrator by rule adopted and promulgated pursuant to the Administrative Procedures Act; and

5. Write down an asset to market value as prescribed by the Administrator by rule adopted and promulgated pursuant to the Administrative Procedures Act.

C. Every investment certificate issuer shall obtain from the Administrator a written acknowledgment, issued in accordance with procedures adopted and promulgated pursuant to the Administrative Procedures Act, that the investment certificate issuer engages in the business of accepting investor funds or deposits in exchange for the issuance of investment certificates. Any investment certificate issuer who obtains such an acknowledgment shall be subject to this section and shall possess all the rights, powers and privileges and shall be subject to all of the duties, restrictions and limitations contained herein. No company or person who fails to obtain such acknowledgment within ninety (90) days of the effective date of the adoption by the Administrator of procedures governing the issuance of a written acknowledgment shall possess or exercise, unless expressly given and possessed or exercised under other laws, any of the benefits, rights, powers or privileges which are herein conferred on investment certificate issuers. Any company or person who fails to obtain a written acknowledgment as described herein may not engage in the business of issuing investment certificates.

D. Any officer, director or employee of an investment certificate issuer found by the Administrator to be dishonest, reckless, unfit to participate in the conduct of the affairs of the institution, or practicing a continuing disregard or violation of

laws, rules, regulations or orders which are likely to cause substantial loss to the company or likely to seriously weaken the condition of the company shall be removed immediately from office by the board of directors of the investment certificate issuer of which he or she is an officer, director or employee, on the written order of the Administrator; provided, that the investment certificate issuer or officer, employee, or director may within ten (10) days file a notice of protest for the removal with the Commission, and as soon as possible thereafter, the Commission will review the order of the Administrator and make findings as it deems proper, and that, pending said time, the officer, employee or director shall not perform any of the duties of his office.

E. An investment certificate issuer shall not, without the consent of the Administrator:

1. Make a loan to any of its stockholders owning twenty-five percent (25%) or more of the stock of the investment certificate issuer, or its officers or directors;

2. Make a loan to any employee in excess of Ten Thousand Dollars (\$10,000.00); or

3. Make a loan to or other investment in or purchase any asset from any company in which any of its officers, directors or stockholders may have any direct or indirect interest, unless made in an arm's length transaction.

F. An investment certificate issuer shall not, without the consent of the Administrator:

1. Lend money in excess of ten percent (10%) of its shareholders' equity to any person, association, partnership or corporation liable for such obligations; provided, however, that this limitation does not apply to the purchase of investment securities; or

2. Engage in, or acquire any interest in, any business prohibited to a bank chartered under the laws of this state.

G. The shareholders' equity of an investment certificate issuer shall not be less than ten percent (10%) of the investment certificates outstanding. Provided, an investment certificate issuer lawfully incorporated and operating in this state on or before November 1, 1985, with less than the above specified shareholders' equity shall, at the beginning of each fiscal year thereafter, increase its shareholders' equity by a minimum of one-fourth (1/4) the difference between its shareholders' equity on November 1, 1985, and the above specified amount until such time as its shareholders' equity equals or exceeds the amount specified above. For purposes of computing the shareholders' equity, the reserve against bad debts shall be included.

H. Every investment certificate issuer shall maintain a reserve against bad debts in an amount required by the Administrator by rule adopted and promulgated pursuant to the Administrative Procedures

Act, but in no event shall the reserve against bad debts be less than two percent (2%) of total loans outstanding.

I. If the Administrator finds the capital of an investment certificate issuer to be impaired according to the standard set forth in subsection G of this section, the Administrator may:

1. Give notice of the impairment to the directors and shareholders of the investment certificate issuer and levy an assessment in a designated amount upon the holders of record of the investment certificate issuer's stock to remedy an impairment of capital. Upon receipt of an order to levy an assessment, the directors shall cause to be sent to all holders of stock, at their addresses as listed on the books of the investment certificate issuer, a notice of the amount of the assessment and a copy of this subsection. If an assessment is not paid within ninety (90) days after the order is mailed, the Administrator, at his or her discretion, may offer the shares of the defaulting stockholders for sale at public auction at a price which shall not be less than the amount of the assessment and the cost of the sale; or

2. Apply to the district court of any county where the assets of the investment certificate issuer are located for an order appointing a conservator of, and directing him to rehabilitate, the investment certificate issuer. If all reasonable efforts to rehabilitate the investment certificate issuer fail, the Administrator may apply to the court for an order directing the appointment of a liquidator to dissolve any such issuer and liquidate its assets. All rights and interests of the stockholders in the stock, property and assets of such investment certificate issuer are thereby terminated except the rights of stockholders to the proceeds of liquidation, if any, after all other valid claims, including interest, against the assets of the investment certificate issuer and the proceeds of liquidation have been satisfied. The conservator or liquidator appointed under this subsection shall meet qualifications established by the Administrator by rule adopted and promulgated pursuant to the Administrative Procedures Act.

J. Whenever the capital or reserve of any investment certificate issuer shall be impaired according to the standards set forth in subsections G and H of this section, the investment certificate issuer shall make no new loans, renew any investment certificates or sell new investment certificates without the consent of the Administrator.

K. 1. It shall be unlawful for any investment certificate issuer to issue investment certificates when insolvent.

2. Every officer, director, principal stockholder, or every other person who materially participates or aids in the issuance of an investment certificate in violation of this subsection, or who directly or indirectly controls any such person, shall be jointly and severally liable, unless the officer, director, principal

stockholder, or any other person who so participates, aids or controls, sustains the burden of proof that the person did not know, and could not have known, of the existence of the facts by reason of which liability is alleged to exist. There shall be contribution as in cases of contract among the persons so liable.

3. The rights and remedies provided for in this subsection are in addition to any other rights or remedies provided for in Title 71 of the Oklahoma Statutes, or that may exist at law or in equity.

L. The Administrator may as often as he or she deems it prudent and necessary for the protection of the public, make or cause to be made examinations of the books, records, papers, assets and liabilities of every kind and character owned by, or relating to, every investment certificate issuer.

M. Every investment certificate issuer shall make and file with the Administrator reports at such times and in such form as the Administrator may prescribe by rule or order. The reports shall be verified by the oath of either the president, the vice-president, or the secretary and attested by the signature of two or more of the directors. Each report shall exhibit in detail, as may be required by the Administrator, the resources and liabilities of the investment certificate issuer at the close of business on the day to be specified by the Administrator.

N. Every investment certificate issuer whose investor funds or deposits are not insured by an agency of the government shall disclose on the face of each investment certificate in ten-point type the following:

"This certificate is not insured by the Federal Deposit Insurance Corporation or any other agency of the government."
Added by Laws 2003, c. 347, § 17, eff. July 1, 2004.

§71-1-401. Broker-dealer registration requirement and exemptions.

A. It is unlawful for a person to transact business in this state as a broker-dealer, unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection B or D of this section.

B. The following persons are exempt from the registration requirement of subsection A of this section:

1. A broker-dealer without a place of business in this state if its only transactions effected in this state are with:

- a. the issuer of the securities involved in the transactions,
- b. a broker-dealer registered under this act or a broker-dealer not required to be registered as a broker-dealer under this act,
- c. an institutional investor,
- d. a nonaffiliated federal covered investment adviser with investments under management in excess of One Hundred

Million Dollars (\$100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record,

- e. a bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence,
- f. a bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:
 - (1) the broker-dealer is registered under the Securities Exchange Act of 1934 or the broker-dealer is not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence, and
 - (2) within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed, or, if earlier, the date on which the Administrator notifies the person that the Administrator has denied the application for registration or has stayed the pendency of the application for cause, and
- g. not more than three customers in this state during the previous twelve (12) months, in addition to those specified in subparagraphs a through f of this paragraph, if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business;

2. A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller

of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision; and

3. Any other person exempted by rule or order under this act.

C. It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked under this act; or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser or a federal covered investment adviser by an order of the securities regulator of a state, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause shown, an order under this act may modify or waive the prohibitions of this subsection.

D. A rule adopted or order issued under this act may permit:

1. A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

- a. an individual from Canada or other foreign jurisdiction that is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States,
- b. an individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction, or
- c. an individual who is resident in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

2. An agent who represents a broker-dealer, that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of any securities in this state as permitted for a broker-dealer described in paragraph 1 of this subsection.

Added by Laws 2003, c. 347, § 18, eff. July 1, 2004. Amended by Laws 2016, c. 107, § 2, eff. Nov. 1, 2016.

§71-1-402. Agent registration requirement and exemptions.

A. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection B of this section.

B. The following individuals are exempt from the registration requirement of subsection A of this section:

1. An individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)(2));

2. An individual who represents a broker-dealer that is exempt under subsection B or D of Section 18 of this act;

3. An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries to existing employees, partners, members or directors of the issuer or the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

4. An individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 7 of this act, other than paragraphs 11 and 14 of Section 7 of this act;

5. An individual who represents an issuer who effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

6. An individual who represents a broker-dealer registered in this state under subsection A of Section 18 of this act or exempt under subsection B of Section 18 of this act in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of One Hundred Million Dollars (\$100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record;

7. An individual who represents an issuer in connection with the purchase of the issuer's own securities;

8. An individual who represents an issuer and who restricts participation to performing ministerial or clerical work; or

9. Any other individual exempted by rule adopted or order issued under this act.

C. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered

under this act or an issuer that is offering, selling or purchasing its securities in this state.

D. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection A of this section or exempt from registration under subsection B of this section.

E. Unless prohibited by rule adopted or order issued under this act, an individual may act as an agent for more than one broker-dealer or more than one issuer at a time.

F. It is unlawful for an individual acting as an agent, directly or indirectly, to conduct business in this state on behalf of a broker-dealer or issuer if the registration of the individual as an agent is suspended or revoked under this act; or the individual is barred from employment or association with a broker-dealer by an order under this act, the Securities and Exchange Commission, or a self-regulatory organization; or the individual is subject to an order of a court of competent jurisdiction temporarily, preliminarily or permanently enjoining such individual from conducting business in this state on behalf of a broker-dealer or issuer.

Added by Laws 2003, c. 347, § 19, eff. July 1, 2004.

§71-1-403. Investment adviser registration requirement and exemptions.

A. It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection B of this section.

B. The following persons are exempt from the registration requirement of subsection A of this section:

1. A federal covered investment adviser;
2. A person without a place of business in this state that is registered under the securities act of the state in which that person has its principal place of business if its only clients in this state are:
 - a. federal covered investment advisers, investment advisers registered under this act, or broker-dealers registered under this act,
 - b. institutional investors,
 - c. bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence, or
 - d. any other client exempted by rule adopted or order issued under this act;

3. A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five clients that are residents of this state in addition to those specified under paragraph 2 of this subsection; or

4. Any other person exempted by rule adopted or order issued under this act.

C. It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked under this act, or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this act, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the Administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

D. It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this act as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under subsection A of Section 21 of this act or is exempt from registration under subsection B of Section 21 of this act.

E. The exemption from registration provided by subparagraph b of paragraph 2 of subsection B of this section shall not be available to any person who acts as an investment adviser to the state, any county, municipality or school district of this state, or any other political subdivision of this state; any agency or corporate or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

Added by Laws 2003, c. 347, § 20, eff. July 1, 2004.

§71-1-404. Investment adviser representative registration requirement and exemptions.

A. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection B of this section.

B. The following individuals are exempt from the registration requirement of subsection A of this section:

1. An individual who is employed by or associated with an investment adviser that is exempt from registration under subsection B of Section 20 of this act unless the individual has a place of

business in this state or is not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); and

2. Any other individual exempted by rule adopted or order issued under this act.

C. The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this act or a federal covered investment adviser that has made or is required to make a notice filing under Section 22 of this act.

D. An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser at a time unless a rule adopted or order issued under this act prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

E. It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked; or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this act, the Securities and Exchange Commission, or a self-regulatory organization; or the individual is subject to an order of a court of competent jurisdiction temporarily, preliminarily or permanently enjoining such individual from conducting business in this state on behalf of an investment adviser or a federal covered investment adviser. Upon request from a federal covered investment adviser and for good cause, the Administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

F. An investment adviser registered under this act, a federal covered investment adviser that has filed a notice under Section 22 of this act, or a broker-dealer registered under this act is not required to employ or associate with an individual as an investment adviser representative for the referral of investment advisory clients so long as any compensation paid by such persons for such referral is paid to an investment adviser registered under this act, a federal covered investment adviser who has filed a notice under Section 22 of this act, or a broker-dealer registered under this act with which the individual is employed or associated as an investment adviser representative.

Added by Laws 2003, c. 347, § 21, eff. July 1, 2004.

§71-1-405. Federal covered investment adviser registration requirement and exemptions.

A. Except with respect to a federal covered investment adviser described in subsection B of this section, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection C of this section.

B. The following federal covered investment advisers are not required to comply with subsection C of this section:

1. A federal covered investment adviser without a place of business in this state if its only clients in this state are:
 - a. federal covered investment advisers, investment advisers registered under this act, and broker-dealers registered under this act,
 - b. institutional investors,
 - c. bona fide preexisting clients whose principal places of residence are not in this state, or
 - d. other clients specified by rule adopted or order issued under this act;

2. A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five clients that are residents in this state in addition to those specified under paragraph 1 of this subsection; and

3. Any other person excluded by rule adopted or order issued under this act.

C. A person acting as a federal covered investment adviser, not excluded under subsection B of this section, shall file a notice containing a consent to service of process complying with Section 49 of this act, such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule or order under this act, and the fee specified in Section 50 of this act.

D. The notice under subsection C of this section becomes effective upon its filing and expires at midnight on December 31 each year.

Added by Laws 2003, c. 347, § 22, eff. July 1, 2004.

§71-1-406. Registration application - Time of becoming effective.

A. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application that contains:

1. The information required for the filing of a uniform application, a consent to service of process complying with Section 49 of this act, the fee specified in Section 50 of this act and any reasonable fees charged by the designee of the Administrator for processing the filing; and

2. Upon request by the Administrator, any other financial or other information that the Administrator determines is appropriate.

B. If the information contained in an application that is filed under subsection A of this section is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

C. If an order is not in effect and a proceeding is not pending under Section 28 of this act, registration becomes effective at noon on the 45th day after a completed application is filed unless the registration is denied. A rule adopted or order issued under this act may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

D. A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under Section 28 of this act, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this act, by paying the fee specified in Section 50 of this act, and by paying costs charged by the designee of the Administrator for processing the filings.

E. A rule adopted or order issued under this act may impose such other conditions not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this act may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

Added by Laws 2003, c. 347, § 23, eff. July 1, 2004.

§71-1-407. Succession and change in registration of broker-dealer or investment adviser.

A. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section 18 or 20 of this act, or a notice pursuant to Section 22 of this act, for the unexpired portion of the current registration or notice filing.

B. A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or upon a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this act. If there is a material change in financial condition or management, the broker-dealer or investment adviser

shall file a new application for registration. Any predecessor registered under this act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

C. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or upon a date designated by the registrant.

D. A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this act.

Added by Laws 2003, c. 347, § 24, eff. July 1, 2004.

§71-1-408. Termination of employment or association of agent and investment adviser representative - Transfer of employment or association.

A. If an agent registered under this act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

B. If an agent registered under this act terminates employment by or association with a broker-dealer registered under this act and begins employment by or association with another broker-dealer registered under this act; or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser registered under this act; or a federal covered investment adviser that has filed a notice under Section 22 of this act, and begins employment by or association with another investment adviser registered under this act or a federal covered investment adviser that has filed a notice under Section 22 of this act; then upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of subsection A of Section 23 of this act, and payment of the filing fee required under Section 50 of this act, the registration of the agent or investment adviser representative, is:

1. Immediately effective as of the date of the completed filing if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser

Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or

2. Temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

C. The Administrator may withdraw the temporary registration if there are or were grounds for discipline under Section 28 of this act and the Administrator does so within thirty (30) days after the filing of the application. If the Administrator does not withdraw the temporary registration within the 30 day period, registration becomes automatically effective on the 31st day after filing.

D. The Administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under paragraph 1 or 2 of subsection B of this section based on the public interest and the protection of investors.

E. If the Administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this act may require the registration be canceled or terminated or the application denied. The Administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

Added by Laws 2003, c. 347, § 25, eff. July 1, 2004.

§71-1-409. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.

Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this act unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this act. The Administrator may institute a revocation or suspension proceeding under Section 28 of this act within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending when the application is filed.

Added by Laws 2003, c. 347, § 26, eff. July 1, 2004.

§71-1-410. Postregistration requirements.

A. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-18a), a rule adopted or order issued under this act may establish minimum financial requirements for broker-dealers registered or required to be registered under this act and investment advisers registered or required to be registered under this act.

B. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-18a), a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall file such financial reports as are required by a rule adopted or order issued under this act. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

C. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-18a):

1. A broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records as required by rule adopted or order issued under this act;

2. Broker-dealer records required to be maintained under paragraph 1 of this subsection may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the Administrator; and

3. Investment adviser records required to be maintained under paragraph 1 of this subsection may be maintained in any form of data storage required by rule adopted or order issued under this act.

D. The records of a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the Administrator, within or without this state, as the Administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Administrator may copy, and remove for audit or inspection copies of, all records the Administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The Administrator may assess a

reasonable charge for conducting an audit or inspection under this subsection.

E. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-18a), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or federal covered investment adviser. A rule adopted or order issued under this act may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

F. With respect to an investment adviser registered or required to be registered under this act, a rule adopted or order issued under this act may require that information be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

G. A rule adopted or order issued under this act may require any individual registered under Section 19 or 21 of this act to participate in a continuing education program which is approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this act may require continuing education for an individual registered under Section 21 of this act. Added by Laws 2003, c. 347, § 27, eff. July 1, 2004.

§71-1-411. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

A. If the Administrator finds that the order is in the public interest and subsection D of this section authorizes the action, an order issued under this act may deny an application, or may condition or limit registration:

1. Of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative; and

2. If the applicant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser.

B. If the Administrator finds that the order issued is in the public interest and subsection D of this section authorizes the action an order issued under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar

functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the Administrator:

1. May not institute a revocation or suspension proceeding under this subsection based on an order issued by another state that is reported to the Administrator or designee later than one year after the date of the order on which it is based; and

2. Under subparagraphs a and b of paragraph 5 of subsection D of this section may not issue an order on the basis of an order under the state securities act of another state unless the other order was based on conduct for which subsection D of this section would authorize the action had the conduct occurred in this state.

C. If the Administrator finds that the order is in the public interest and paragraphs 1 through 6, 8, 9, 10, 12 or 13 of subsection D of this section authorizes the action, an order under this act may censure, impose a bar, impose a civil penalty in an amount not to exceed a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations on a registrant, and/or recover the costs of the investigation from a registrant and if the registrant is a broker-dealer or investment adviser, from any partner, officer, or director, any person having a similar function or any person directly or indirectly controlling the broker-dealer or investment adviser.

D. A person may be disciplined under subsections A through C of this section if the person:

1. Has filed an application for registration in this state under this act or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

2. Has willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;

3. Has been convicted of any felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity futures or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

4. Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the Administrator under this act or a predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

5. Is the subject of an order, issued after notice and opportunity for hearing by:
- a. the securities, depository institution, insurance or other financial services regulator of a state, or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative,
 - b. the securities regulator of a state or by the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser,
 - c. the Securities and Exchange Commission or by a self-regulatory organization suspending, barring, canceling or expelling the registrant from membership in a self-regulatory organization,
 - d. a court adjudicating a United States Postal Service fraud,
 - e. the insurance regulator of a state denying, suspending, or revoking the registration of an insurance agent, or
 - f. a depository institution regulator suspending or barring a person from the banking or depository institution business;
6. Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;
7. Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the Administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;
8. Refuses to allow or otherwise impedes the Administrator from conducting an audit or inspection under subsection D of Section 27 of this act or refuses access to any registrant's office to conduct an audit or inspection under subsection D of Section 27 of this act;
9. Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the

person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;

10. Has not paid the proper filing fee within thirty (30) days after having been notified by the Administrator of a deficiency, but the Administrator shall vacate an order under this paragraph when the deficiency is corrected;

11. After notice and opportunity for a hearing, has been found within the previous ten (10) years:

- a. by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated,
- b. to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person, or
- c. to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

12. Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance or insurance laws of a state;

13. Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous ten (10) years; or

14. Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection E of this section. The Administrator may require an applicant for registration under Section 19 or 21 of this act who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

E. A rule adopted or order issued under this act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this act may waive, in whole or in part, an examination as to an individual and a rule adopted under this act may waive, in

whole or in part, an examination as to a class of individuals if the Administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

F. The Administrator may summarily postpone an application or summarily suspend a registration before final determination of an administrative proceeding. Upon the issuance of the order, the Administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing and such hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a hearing is not requested and none is ordered by the Administrator, within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

G. An order may not be issued under this section, except under subsection F of this section, without:

1. Appropriate notice to the applicant or registrant;
2. Opportunity for hearing; and
3. Findings of fact and conclusions of law in a record in

accordance with the Administrative Procedures Act. If the person to whom the notice is addressed does not request a hearing within fifteen (15) days after the service of notice is effective, a final order as provided in subsection A, B or C of this section may be issued.

H. A person who controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the Administrator under subsections A through C of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is the basis for discipline under this section.

I. The Administrator may not institute a proceeding under subsection A, B or C of this section based solely on material facts actually known by the Administrator unless an investigation or the proceeding is instituted within one year after the Administrator actually knew the material facts.

Added by Laws 2003, c. 347, § 28, eff. July 1, 2004.

§71-1-501. General fraud.

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

1. To employ a device, scheme, or artifice to defraud;

2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or

3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person. Added by Laws 2003, c. 347, § 29, eff. July 1, 2004.

§71-1-502. Prohibited conduct in providing investment advice.

A. It is unlawful for a person that advises others, for compensation, either directly or indirectly, or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities:

1. To employ a device, scheme, or artifice to defraud another person;

2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or

3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

B. 1. A rule adopted under this act may define an act, practice, or course of business of an investment adviser or an investment adviser representative as fraudulent, deceptive or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

2. A rule adopted or order issued under this act may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

Added by Laws 2003, c. 347, § 30, eff. July 1, 2004.

§71-1-503. Evidentiary burden.

A. In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusion.

B. In a criminal proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

Added by Laws 2003, c. 347, § 31, eff. July 1, 2004.

§71-1-504. Filing of sales and advertising literature.

A. Except as otherwise provided in subsection B of this section, it is unlawful for a person to distribute a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising communication relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this act, unless the sales and advertising literature is first filed with the Department with the fee specified in Section 50 of this act and the Department has responded indicating that the Administrator has no objection to its distribution or use.

B. This section does not apply to sales and advertising literature specified in subsection A of this section relating to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 6, 7, or 8 of this act except as may be required pursuant to paragraph 7 of Section 6 of this act.

Added by Laws 2003, c. 347, § 32, eff. July 1, 2004.

§71-1-505. Misleading filings.

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

Added by Laws 2003, c. 347, § 33, eff. July 1, 2004.

§71-1-506. Misrepresentations concerning registration or exemption.

The filing of an application for registration, a registration statement, or a notice filing under this act, or the registration of a person or security under this act, does not constitute a finding by the Administrator that a record filed under this act is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the Administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client, a representation inconsistent with this section.

Added by Laws 2003, c. 347, § 34, eff. July 1, 2004.

§71-1-507. Qualified immunity.

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to an alleged untrue statement that is contained in a record required by the Administrator, or designee of the Administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless it is proven that the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.
Added by Laws 2003, c. 347, § 35, eff. July 1, 2004.

§71-1-508. Violations - Criminal penalties - Administrative fines.

A. A person who willfully violates this act, or a rule adopted or order issued under this act, except Section 32 of this act or the notice filing requirements of Section 11 or 22 of this act, or that willfully violates Section 33 of this act knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than One Hundred Thousand Dollars (\$100,000.00) or imprisoned not more than ten (10) years, or both such fine and imprisonment. An individual convicted of violating a rule adopted or order issued under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

B. This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

C. On a criminal matter referred by the Administrator, the prosecuting attorney may designate and appoint one or more lawyers of the Department as special assistants as available for the purpose of assisting in or conducting a criminal prosecution arising by reason of an investigation or proceeding under this section.
Added by Laws 2003, c. 347, § 36, eff. July 1, 2004.

§71-1-509. Civil liability.

A. Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

B. A person is liable to a purchaser if the person sells a security in violation of Section 10 of this section, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission, and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth

or omission. An action under this subsection is governed by the following:

1. The purchaser may maintain an action at law or in equity to recover the consideration paid for the security, and interest at the legal rate of interest per year from the date of the purchase, less the amount of any income received on the security, plus costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph 3 of this subsection.

2. The tender referred to in paragraph 1 of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph 3 of this subsection.

3. Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest per year from the date of purchase, costs, and reasonable attorneys' fees determined by the court.

C. A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

1. The seller may maintain an action at law or in equity to recover the security, and any income received on the security, costs, and reasonable attorney's fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph 3 of this subsection.

2. The tender referred to in paragraph 1 of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph 3 of this subsection.

3. Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest per year from the date of the sale of the

security, costs, and reasonable attorneys' fees determined by the court.

D. A person acting as a broker-dealer or agent that sells or buys a security in violation of subsection A of Section 18, subsection A of Section 19, or Section 34 of this act is liable to the customer. The customer, if a purchaser, may maintain an action at law or in equity for recovery of actual damages as specified in paragraphs 1 through 3 of subsection B of this section; or, if a seller, a remedy as specified in paragraphs 1 through 3 of subsection C of this section.

E. A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of subsection A of Section 20, subsection A of Section 21, or Section 34 of this act is liable to the client. The client may maintain an action at law or in equity to recover the consideration paid for the advice, interest at the legal rate of interest per year from the date of payment, costs, and reasonable attorney's fees determined by the court.

F. A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

1. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest per year from the date of the fraudulent conduct, costs, and reasonable attorney's fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

2. This subsection does not apply to a broker-dealer or its agents, if the investment advice is solely incidental to the conduct of business as a broker-dealer and no special compensation is received for the investment advice.

G. The following persons are liable jointly and severally with and to the same extent as persons liable under subsections B through F of this section:

1. A person that directly or indirectly controls a person liable under subsections B through F of this section, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist;

2. An individual who is a managing partner, executive officer, or director of a person liable under subsections B through F of this section, including an individual having a similar status or

performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist;

3. An individual who is an employee of or associated with a person liable under subsections B through F of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist;

4. A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections B through F of this section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which liability is alleged to exist; and

5. Any other person who materially aids in the conduct giving rise to the liability under subsections B through F of this section, unless the person sustains the burden or proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which liability is alleged to exist.

H. A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

I. A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

J. A person may not obtain relief:

1. Under subsection B of this section for violation of Section 10 of this act, or under subsection D or E of this section, unless the action is commenced within one year after the violation occurred; or

2. Under subsection B of this section, other than for violation of Section 10 of this act, or under subsection C or F of this section, unless the action is instituted within the earlier of two (2) years after discovery of the facts constituting the violation or five (5) years after such violation.

K. A person that has made, or has engaged in the performance of, a contract in violation of this act or a rule adopted or order issued under this act, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this act, may not base an action on the contract.

L. A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to

waive compliance with this act or a rule adopted or order issued under this act is void.

M. The rights and remedies provided by this act are in addition to any other rights or remedies that may exist, but this act does not create a cause of action not specified in this section.

Added by Laws 2003, c. 347, § 37, eff. July 1, 2004.

§71-1-510. Rescission offers.

A purchaser, seller, or recipient of investment advice may not maintain an action under Section 37 of this act if:

1. The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

- a. an offer stating the respect in which liability under Section 37 of this act may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misstatements or omissions in the information that was required by this act to be furnished to that person at the time of the purchase, sale, or investment advice,
- b. if the basis for relief under this section may have been a violation of subsection B of Section 37 of this act, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest per year from the date of purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest per year from the date of purchase in cash equal to the damages computed in the manner provided in this subsection,
- c. if the basis for relief under this section may have been a violation of subsection C of Section 37 of this act, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser, and interest at the legal rate of interest from the date of the sale, or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would

have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest per year from the date of the sale,

- d. if the basis for relief under this section may have been a violation of subsection D of Section 37 of this act, and if the customer is a purchaser, an offer to pay as specified in subparagraph b of this paragraph; or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph c of this paragraph,
- e. if the basis for relief under this section may have been a violation of subsection E of Section 37 of this act, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest per year from the date of payment, or
- f. if the basis for relief under this section may have been a violation of subsection F of Section 37 of this act, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest per year from the date of the violation causing the loss;

2. An offer under paragraph 1 of this subsection states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty (30) days after the date of its receipt by the purchaser, seller, or recipient of investment advice, or any shorter period, of not less than three (3) days, that the Administrator, by order, specifies;

3. The offeror has the present ability to pay the amount offered or to tender the security under paragraph 1 of this subsection;

4. The offer under paragraph 1 of this subsection is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

5. The purchaser, seller, or recipient of investment advice that accepts the offer under paragraph 1 of this subsection, in a record within the period specified under paragraph 2 of this subsection is paid in accordance with the terms of the offer.

Added by Laws 2003, c. 347, § 38, eff. July 1, 2004.

§71-1-601. Administration.

A. The Administrator shall administer 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 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 Banking Commissioner shall be and is hereby made an ex officio voting member of 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 such person is registered as a broker-dealer, agent, investment adviser, or investment adviser representative under 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 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 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 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 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 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 the Oklahoma Uniform Securities Act of 2004 and action taken thereon, a list of securities registered under the Oklahoma Uniform Securities Act of 2004 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 the Oklahoma Uniform Securities Act of 2004.

F. The Commission shall appoint a full-time Administrator, who shall serve at the pleasure of the Commission. The Administrator shall administer the Oklahoma Uniform Securities Act of 2004 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 or she will faithfully execute the duties of the 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 or she 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 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 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 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. 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.

Added by Laws 2003, c. 347, § 39, eff. July 1, 2004. Amended by Laws 2012, c. 304, § 643; Laws 2017, c. 158, § 3, emerg. eff. May 1, 2017.

§71-1-602. Investigations and subpoenas.

A. The Administrator may:

1. Conduct public or private investigations within or outside of this state which the Administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;

2. Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

3. Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the Administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

B. For the purpose of an investigation or proceeding under this act, the Administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Administrator considers relevant or material to the investigation or proceeding.

C. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the Administrator under this act, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained or a court of another state to enforce compliance. The court may:

1. Hold the person in contempt;

2. Order the person to appear before the Administrator or an officer designated by the Administrator;

3. Order the person to testify about the matter under investigation or in question;

4. Order the production of records;

5. Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

6. Impose a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations in a single proceeding or a series of related proceedings; and

7. Grant any other necessary or appropriate relief.

D. This section does not preclude a person from applying to the district court of Oklahoma County or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

E. An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the Administrator or a designated officer under this act or in an action or proceeding instituted by the Administrator under this act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the Administrator may apply to the district court of Oklahoma County to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

F. At the request of a law enforcement or another governmental or regulatory agency or a self-regulatory organization, the Administrator may provide assistance if the requesting entity states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting entity administers or enforces. The Administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the Administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this act or other law of this state if occurring in this state. In deciding whether to provide the assistance, the Administrator may consider whether the requesting entity is permitted and has agreed to provide assistance reciprocally within its state, federal or foreign jurisdiction to the Administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the Administrator to carry out the request for assistance. Added by Laws 2003, c. 347, § 40, eff. July 1, 2004.

§71-1-603. Civil enforcement.

A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a

dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

2. Order other appropriate or ancillary relief, which may include:

- a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,
- b. ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property,
- c. imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act, and
- d. ordering the payment of prejudgment and postjudgment interest; or

3. Order such other relief as the court considers appropriate.

C. The Administrator may not be required to post a bond in an action or proceeding under this act.

Added by Laws 2003, c. 347, § 41, eff. July 1, 2004.

§71-1-604. Administrative enforcement.

A. If the Administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order

issued under this act or constituting a dishonest or unethical practice, the Administrator may:

1. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;

2. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under subparagraph d or f of paragraph 1 of subsection B of Section 18 of this act or an investment adviser under subparagraph c of paragraph 2 of subsection B of Section 20 of this act; or

3. Issue an order under Section 9 of this act.

B. An order under subsection A of this section is effective on the date of issuance. Upon issuance of the order, the Administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the Administrator will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing and the hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a person subject to the order does not request a hearing and none is ordered by the Administrator, within thirty (30) days after the date of service of the order, the order, that may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

C. If a hearing is requested or ordered pursuant to subsection B of this section, a hearing must be held pursuant to the Administrative Procedures Act. A final order may not be issued unless the Administrator makes findings of fact and conclusions of law in a record in accordance with the Administrative Procedures Act. The final order may make final, vacate, or modify the order issued under subsection A of this section.

D. In a final order under subsection C of this section, the Administrator may impose a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations in a single proceeding or a series of related proceedings.

E. In a final order, the Administrator may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act.

F. If a petition for judicial review of a final order is not filed in accordance with Section 47 of this act, the Administrator

may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

G. If a person does not comply with an order under this section, the Administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the Administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not to exceed One Thousand Dollars (\$1,000.00) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

Added by Laws 2003, c. 347, § 42, eff. July 1, 2004.

§71-1-605. Rules, forms, orders, interpretative opinions, and hearings.

A. The Administrator may:

1. Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this act and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

2. By rule, define terms, whether or not used in this act, but those definitions may not be inconsistent with this act; and

3. By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

B. Under this act, a rule or form may not be adopted or amended, or an order issued or amended, unless the Administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this act. In adopting, amending, and repealing rules and forms, Section 46 of this act applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

C. Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the Administrator may require that a financial statement filed under this act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this act. A rule adopted or order issued under this act may establish:

1. Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisors Act of 1940, the form and content of financial statements required under this act;

2. Whether unconsolidated financial statements must be filed; and

3. Whether required financial statements must be audited by an independent certified public accountant.

D. The Administrator may provide interpretative opinions or issue determinations that the Administrator will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. The charge for interpretative opinions or determinations that the Administrator will not institute an action or a proceeding under this act shall be specified in Section 50 of this act.

E. A penalty under this act may not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the Administrator under this act.

F. A hearing in an administrative proceeding under this act shall be conducted in public.

Added by Laws 2003, c. 347, § 43, eff. July 1, 2004.

§71-1-606. Administrative files and opinions.

A. The Administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this act or the predecessor act; and interpretative opinions or no action determinations issued under this act.

B. The Administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

C. The Administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person who so requests. The charge for furnishing the record or certification shall be specified in Section 50 of this act. A copy of the record certified or a certificate by the Administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

Added by Laws 2003, c. 347, § 44, eff. July 1, 2004.

§71-1-607. Public records - Confidentiality.

A. Except as otherwise provided in subsection B of this section, records obtained by the Administrator or filed under this act, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

B. The following records are not public records and are not available for public examination under subsection A of this section:

1. A record obtained by the Administrator or created by a representative of the Administrator in connection with an audit or inspection under subsection K of Section 14 or subsection D of Section 27 of this act or an investigation under Section 40 of this act;

2. A part of a record filed in connection with a registration statement under Sections 10 and 12 through 14 of this act or a record obtained under subsection K of Section 14 or subsection D of Section 27 of this act that contains trade secrets or confidential information if the person filing the registration statement or providing the record has asserted a claim of confidentiality or privilege that is authorized by law;

3. A record that is not required to be provided to the Administrator or filed under this act and is provided to the Administrator only on the condition that the record will not be subject to public examination or disclosure;

4. A record in a litigation file;

5. A nonpublic record received from a person specified in subsection A of Section 46 of this act;

6. A record obtained by the Administrator through a designee of the Administrator that a rule or order under this act determines has been:

- a. expunged from the Administrator's records by the designee, or
- b. determined to be nonpublic or nondisclosable by that designee if the Administrator finds the determination to be in the public interest and necessary for the protection of investors; and

7. Any social security number, residential address unless used as a business address, and residential telephone number contained in a record that is filed.

C. If disclosure is for the purpose of a civil or administrative investigation, action, or proceeding brought by the Administrator or a criminal referral made by the Administrator or to a person specified in subsection A of Section 46 of this act, the Administrator may disclose a record obtained in connection with an audit or inspection under subsection K of Section 14 of this act or subsection D of Section 27 of this act or a record obtained or created in connection with an investigation under Section 40 of this act so long as the receiving person specified in subsection A of

Section 46 of this act provides assurances to undertake such safeguards as are necessary and appropriate to protect the confidentiality of files to which access is granted and information derived therefrom.

Added by Laws 2003, c. 347, § 45, eff. July 1, 2004.

§71-1-608. Uniformity and cooperation with other agencies.

A. The Administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to Section 45 of this act, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

B. In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this act, the Administrator shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

1. Maximizing effectiveness of regulation for the protection of investors;

2. Maximizing uniformity in federal and state regulatory standards; and

3. Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

C. The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

1. Establishing or employing one or more designees as a central depository for registration and notice filings under this act and for records required or allowed to be maintained under this act;

2. Developing and maintaining uniform forms;

3. Conducting a joint examination or investigation;

4. Holding a joint administrative hearing;

5. Instituting and prosecuting a joint civil or administrative proceeding;

6. Sharing and exchanging personnel;

7. Coordinating registrations under Sections 10 and 18 through 21 of this act and exemptions under Section 8 of this act;

8. Sharing and exchanging records, subject to Section 45 of this act;

9. Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
 10. Formulating common systems and procedures;
 11. Notifying the public of proposed rules, forms, statements of policy, and guidelines;
 12. Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
 13. Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.
- Added by Laws 2003, c. 347, § 46, eff. July 1, 2004.

§71-1-609. Commission review of order - Judicial review.

A. Any person aggrieved by final order of the Administrator may obtain a review by the Commission by filing with the Administrator, within fifteen (15) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part and stating the person's specific grounds therefor. The petition, the record upon which the final order was issued, and written briefs submitted by the appealing parties and the Administrator shall be reviewed by the Commission. The cost of preparing the record of the administrative hearing shall be borne by the appealing parties. Oral argument by all parties may be heard by the Commission en banc if requested by an appealing party. Other than newly discovered evidence, additional evidence may only be presented by the appealing party and/or the Administrator on the request of the Commission. Upon the written request of the party on whose behalf the appeal is brought, or upon the party's own motion, the Administrator shall cause complete stenographic notes to be taken of the proceeding before the Commission. If requested by the appealing party, the cost of taking and transcribing such notes shall be borne by the said appealing party. If such notes are taken upon the motion of the Administrator, the cost shall be borne by the Department. The Commission or a majority thereof shall make such order as is deemed proper, just, and equitable within sixty (60) days of receipt by the Administrator of the written petition of the appealing party or at such later time as agreed to by all parties.

B. Appeals by any person aggrieved by a final order of the Commission, except a final order of the Commission to cease and desist, shall be taken to the Supreme Court of this state within thirty (30) days of the date that a copy of the order is mailed to such person, as shown by the certificate of mailing attached to the order. Any person aggrieved by a final order of the Commission to cease and desist shall be taken to the district court of Oklahoma County within thirty (30) days of the date that a copy of the order

is mailed to such person, as shown by the certificate of mailing attached to the order. The proceedings for review shall be as now prescribed by law and by rules of the reviewing court, subject to the power of the reviewing court to make other and further rules with reference thereto.

C. The commencement of proceedings under this section before the Commission shall not operate as a stay of the Administrator's order, unless so ordered by the Commission. The commencement of proceedings under this section before the Supreme Court shall not operate as a stay of the Commission's order, unless so ordered by the Court. Added by Laws 2003, c. 347, § 47, eff. July 1, 2004.

§71-1-610. Jurisdiction.

A. Sections 10 and 11, subsection A of Section 18, subsection A of Section 19, subsection A of Section 20, subsection A of Section 21, and Sections 29, 34, 37 and 38 of this act do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

B. Subsection A of Section 18, subsection A of Section 19, subsection A of Section 20, subsection A of Section 21, and Sections 29, 34, 37 and 38 of this act do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

C. For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

1. Originates from within this state; or
2. Is directed by the offeror to a place in this state and received at the place to which it is directed.

D. For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

1. Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and
2. Has not previously been communicated to the offeror, orally or in a record, outside this state.

E. An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two thirds of its circulation outside this state during the previous twelve (12) months or when a radio or television program or other

electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

1. The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

2. The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

3. The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

4. The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

F. Subsection A of Section 20, subsection A of Section 21, subsection A of Section 22, and Sections 30, 33 and 34 of this act apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

Added by Laws 2003, c. 347, § 48, eff. July 1, 2004.

§71-1-611. Service of process.

A. A consent to service of process required by this act must be signed and filed in the form required by a rule adopted or order issued under this act. A consent appointing the Administrator the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative under this act or a rule adopted or order issued under this act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

B. If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this act or a rule adopted or order issued under this act and the person has not filed a consent to service of process under subsection A of this section, the act, practice, or course of business constitutes the appointment of the Administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal

representative and has the same force and validity as if the service were made personally on the person.

C. Service under subsection A or B of this section may be made by providing a copy of the process to the office of the Administrator, but it is not effective unless:

1. The plaintiff, which may be the Administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

2. The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the Administrator in a proceeding before the Administrator, allows.

D. Service pursuant to subsection C of this section may be used in a proceeding before the Administrator or by the Administrator in a civil action in which the Administrator is the moving party. Service by mail shall be effective on the date of receipt by the defendant or respondent or if refused, on the date of refusal by the defendant or respondent. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older shall constitute acceptance or refusal by the party addressed. Acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. Refusal by any person to accept delivery of the certified mail provided for in this section, or the refusal to sign the return receipt, or the lack of knowledge of the Administrator of any address to which process may have been mailed shall not in any manner affect the legality of the service, and the person shall be presumed to have had knowledge of the contents of the process.

E. If process is served under subsection C of this section, the court, or the Administrator in a proceeding before the Administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

Added by Laws 2003, c. 347, § 49, eff. July 1, 2004.

§71-1-612. Fees.

A. Unless otherwise provided for by law, the following shall be the fees charged pursuant to the provisions of this act:

1. Broker-dealer registration fee or renewal fee.....\$300.00

2. Broker-dealer or issuer agent or broker-dealer principal registration fee or renewal fee\$50.00
3. Broker-dealer agent on an inactive basis, renewal fee.....\$10.00
4. Investment adviser registration fee or renewal fee.....\$300.00
5. Investment adviser annual notice filing fee.....\$300.00
6. Investment adviser representative registration fee or renewal fee\$50.00
7. Mass transfer fee.....\$10.00 per transferee
8. Mailing list fee.....\$30.00 per year
9. Review of sales literature package\$50.00
10. Broker-dealer or investment adviser financial or operating reports\$50.00
11. Issuer sales reports.....\$50.00
12. Notice of exemption filing or request for order of exemption\$250.00
13. Interpretive opinion or no-action request.....\$250.00
14. Affidavit request.....\$10.00
15. Service of process upon the Administrator.....\$10.00
16. Amendments to registration statements or notice filings pursuant to Section 1-302 of this title involving changes to the issuer's application or notice filing form:
 - a. examination fee...\$50.00, and
 - b. a filing fee computed in the same manner as the filing fee required pursuant to of subsection B of this section for any additional securities being registered.
17. Copying fee.
 - a. 8 1/2" by 14" or smaller\$.25 per page
 - b. Larger than 8 1/2" by 14"\$1.00 per page

- c. Certified copy 8 1/2" by 14" or smaller.....\$1.00 per page
- d. Certified copy larger than 8 1/2" by 14"....\$2.00 per page
- 18. Document search fee for commercial purpose.....\$20.00 per hour
- 19. Notice filing fee for a federal covered security under Section 18 (b) (4) of the Securities Act of 1933.....\$250.00

B. For the purpose of registering securities under this act, any person filing a registration statement shall pay an examination fee of Two Hundred Dollars (\$200.00) and a filing fee computed upon the aggregate offering price of the securities sought to be registered in Oklahoma as follows:

a fee equal to one-tenth of one percent (1/10 of 1%) of said price; provided, in no event shall the filing fee be less than Two Hundred Dollars (\$200.00) or more than Two Thousand Five Hundred Dollars (\$2,500.00).

C. Any person making a notice filing pursuant to subsection A of Section 1-302 of this title, or renewing such a filing, shall pay a filing fee of Five Hundred Dollars (\$500.00) with each such notice or renewal filed.

D. A person required to pay a filing or notice fee under this section may transmit the fee through or to a person designated by rule adopted or order issued under this act. All fees and other charges collected by the Administrator shall be deposited in the General Revenue Fund with the State Treasurer, except for the fees deposited in the Oklahoma Department of Securities Revolving Fund and the amounts deposited in the Oklahoma Department of Securities Investor Education Revolving Fund.

E. There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Securities to be designated the "Oklahoma Department of Securities Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fees and other charges collected by the Administrator as follows:

- 1. The fees collected pursuant to paragraphs 1, 4, 5, 8, 14, 15, 17 and 18 of subsection A of this section;
- 2. The fees collected pursuant to the provisions of Section 1-504 of this title as provided in paragraph 9 of subsection A of this section;
- 3. The examination fees designated in paragraph 16 of subsection A and in subsection B of this section;
- 4. The amounts collected pursuant to subsection D of Section 1-605 of this title set forth in paragraph 13 of subsection A of this section; and

5. One Hundred Fifty Dollars (\$150.00) of each filing fee collected pursuant to subsection C of this section.

The Oklahoma Department of Securities Revolving Fund shall be a continuing fund, not subject to fiscal year limitations. Expenditures from the Oklahoma Department of Securities Revolving Fund shall be made pursuant to the laws of this state and the statutes relating to the Oklahoma Department of Securities, and without legislative appropriation. Expenditures from the Oklahoma Department of Securities Revolving Fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

F. There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Securities to be designated the "Oklahoma Department of Securities Investor Education Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all amounts collected pursuant to court order or judgment in actions brought by the Administrator, and amounts received in multistate settlements participated in by the Department, and interest attributable to the investment of the fund that shall be deposited in the Oklahoma Department of Securities Investor Education Revolving Fund. The Fund may be invested in any investment instrument allowed by Oklahoma Statutes to the State Treasurer for the investment of state funds. Any amounts received from any court settlement in excess of One Million Dollars (\$1,000,000.00) shall be transferred to the General Fund. The Administrator shall use the moneys in this fund exclusively for the specific purposes of research for education and education of Oklahoma residents in matters concerning securities laws and general investor protection. The Oklahoma Department of Securities Investor Education Revolving Fund shall be a continuing fund, not subject to fiscal year limitations. Expenditures from the Oklahoma Department of Securities Investor Education Revolving Fund shall be made pursuant to the laws of this state and the statutes relating to the Oklahoma Department of Securities, and without legislative appropriation. Expenditures from the Oklahoma Department of Securities Investor Education Revolving Fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

G. There is hereby created a petty cash fund for the Oklahoma Department of Securities. The Director of the Office of Management and Enterprise Services and the Administrator are hereby authorized and it shall be their duty to fix the maximum amount of the petty cash fund, not to exceed Five Hundred Dollars (\$500.00). The Director of the Office of Management and Enterprise Services shall

prescribe all forms, systems, and procedures for administering the petty cash fund. The fund shall be used solely to pay:

1. Examination, investigation and litigation expenses of the Department, including, but not limited to, court costs, filing fees, copying fees, and witness fees; and
 2. Incidental operating expenses of the Department not to exceed One Hundred Dollars (\$100.00) per transaction.
- H. Once paid, fees shall be nonrefundable.
- I. Section 211 of Title 62 of the Oklahoma Statutes shall not apply to the Oklahoma Department of Securities or the Oklahoma Securities Commission.

Added by Laws 2003, c. 347, § 50, eff. July 1, 2004. Amended by Laws 2004, c. 265, § 1; Laws 2012, c. 304, § 644.

§71-1-613. Availability of data for supervision of personnel - Sharing of data - Confidentiality.

A. A supervisory agency shall make available to a requesting agency any data obtained or generated by, and in the possession of, the supervisory agency and that the requesting agency deems necessary for review in connection with the supervision of any person over which the requesting agency has direct supervisory authority. However, the requested data must relate to the person, or an affiliate of the person, over which the requesting agency has direct supervisory authority. An agency has direct supervisory authority over a person if such authority is specifically provided by statute, or the agency granted the person's charter, license, or registration, or otherwise granted permission for the person to conduct its business in this state.

B. When a requesting agency and a federal regulatory agency or self-regulatory association have concurrent jurisdiction over a person, a requesting agency may share with such agency or association data received from a supervisory agency. However, the federal regulatory agency or self-regulatory association must return such shared data to the requesting agency unless the federal regulatory agency or self-regulatory association has obtained approval from the supervisory agency to retain the data. The term "federal regulatory agency" shall not include law enforcement agencies.

C. 1. Notwithstanding any other statute, rule, or policy governing or relating to records of the requesting agency, all data received by a requesting agency from a supervisory agency shall be and remain confidential and not open to public inspection, subpoena, or any other form of disclosure while in the possession of the requesting agency. Any request for inspection, subpoena, or other form of disclosure shall be directed at the supervisory agency from which the data originated and disclosure thereof shall be subject to the laws, rules, and policies governing or relating to records of the supervisory agency.

2. The provisions of data by a supervisory agency to a requesting agency under this section shall not constitute a waiver of, or otherwise affect, any privilege or claim of confidentiality that a supervisory agency may claim with respect to such data under any federal laws or laws of this state.

D. A supervisory agency is not required to share original documents with a requesting agency. A requesting agency shall reimburse the supervisory agency for costs associated with providing copies of data to the requesting agency.

E. Nothing in the Oklahoma Financial Privacy Act shall prohibit the sharing of data as described in this section. Additionally, neither a supervisory agency nor requesting agency shall be required to follow any procedure described in the Oklahoma Financial Privacy Act when sharing data as described in this section.

F. As used in this section:

1. "Affiliate" shall mean any person that controls, is controlled by, or is under common control with another person. A person shall be deemed to have "control" over any person if the person:

- a. directly or indirectly or acting through one or more other persons owns, controls, or has power to vote ten percent (10%) or more of any class of voting securities of the other person, or
- b. the person controls in any manner the election, appointment, or designation of a majority of the directors, trustees, or other managing officers of the person;

2. "Data" shall mean copies of any documents, reports, examination reports, letters, correspondence, orders, stipulations, memorandums of understanding, agreements, or any other records not open for public inspection generated by a supervisory agency or obtained by a supervisory agency from the person it supervises, whether in paper or electronic format. However, "data" shall not include records that a requesting agency receives from a supervisory agency pursuant to this section;

3. "Requesting agency" means, as applicable, the Oklahoma State Banking Department, the Oklahoma Insurance Department, or the Oklahoma Department of Securities, that requests from a supervisory agency data relating to a person over which the requesting agency does not have direct supervisory authority;

4. "Supervision" shall mean any examination, assessment, order, stipulation, agreement, report, memorandum of understanding, or other regulatory matter or process that a requesting agency is authorized to perform in relation to a person; and

5. "Supervisory agency" shall mean, as applicable, the Oklahoma State Banking Department, the Oklahoma Insurance Department, or the

Oklahoma Department of Securities, that maintains data relating to a person over which the agency has direct supervisory authority.
Added by Laws 2003, c. 347, § 51, eff. July 1, 2004.

§71-1-701. Application of act to existing proceedings and rights.

A. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act or may be instituted on the basis of conduct occurring before the effective date of this act, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after the effective date of this act, whichever is earlier.

B. All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

C. The predecessor act exclusively applies to an offer or sale made within one (1) year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

Added by Laws 2003, c. 347, § 52, eff. July 1, 2004.

§71-2. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-3. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-4. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-5. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-6. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-7. Repealed by Laws 1985, c. 178, § 81, operative July 1, 1985.

§71-8. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-9. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-10. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-11. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-12. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-13. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-14. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-15. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

§71-16. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-17. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-101. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-102. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-103. Repealed by Laws 1995, c. 196, § 20, eff. July 1, 1995.

§71-201. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

NOTE: Prior to repeal, this section was amended to read as follows:

(a) (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is so registered under this act or unless the person is exempt from registration as provided in paragraph (2) or (3) of this subsection.

(2) A person shall be exempt from registration as a broker-dealer if the person has no place of business in this state and:

- (A) effects transactions in this state exclusively with or through:
 - (i) the issuers of the securities involved in the transactions,
 - (ii) other broker-dealers, or
 - (iii) financial or institutional investors, whether acting for themselves or as trustees;
- (B) is licensed under the securities act of a state in which that person maintains a place of business and offers and sells securities in this state to a person who is an existing customer of the broker-dealer and whose principal place of residence is not in this state; or
- (C) during any period of twelve (12) consecutive months, does not direct more than fifteen offers and sales in this state to persons other than those specified in division (iii) of subparagraph (A) of paragraph (2) of this subsection, whether or not the offeror or any of the offerees is then present in this state, so long as

that person is licensed under the laws of a state in which he or she maintains a place of business.

(3) An individual shall be exempt from registration as an agent if the individual:

- (A) is representing a broker-dealer exempt under paragraph (2) of this subsection;
- (B) is representing an issuer in effecting transactions in a security exempted by paragraph (1), (2), (3), (4), (5), (7), (8), or (9) of Section 401(a) of this title;
- (C) is representing an issuer in effecting transactions exempted by paragraphs (1) through (18), (21) or (22) of Section 401(b) of this title or transactions in securities that are federal covered securities under Section 18(b)(4)(D) of the Securities Act of 1933, except when:
 - (i) a commission is to be paid to such individual, or
 - (ii) such individual is or has been within the past five (5) years subject to the following in connection with a violation of a state or federal securities law or regulation: an order denying, suspending or revoking registration or a cease and desist order of the Administrator; any similar order, judgment, or decree by another state securities agency, the United States Securities and Exchange Commission, or any self-regulatory securities organization; or an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person;
- (D) is representing an issuer in effecting transactions with existing employees, partners, members or directors of the issuer, or a subsidiary or affiliate of the issuer as those terms may be defined by rule or order, if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state; or
- (E) is representing a broker-dealer in effecting in this state only those transactions described in Section 15(h) of the Securities Exchange Act of 1934 and satisfies the conditions set forth in Section 15(h) of the Securities Exchange Act of 1934.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered or is exempt from registration. The registration of an agent is not effective during any period when the agent is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or

begins or terminates those activities which make the person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Administrator.

(c) (1) It is unlawful for any person to transact business in this state as an investment adviser unless registered under this act or unless exempt from registration as provided in paragraph (2) of this subsection.

(2) Subject to paragraph (3) of this subsection, a person shall be exempt from registration as an investment adviser if:

- (A) the person's only clients in this state are investment companies as defined in and registered under the Investment Company Act of 1940 or insurance companies;
- (B) the person is licensed as an investment adviser under the laws of another state, has no place of business within this state, and the person's only clients in this state are other investment advisers, broker-dealers, or financial or institutional investors, whether acting for themselves or as trustees;
- (C) the person has no place of business located within this state and during any period of twelve (12) consecutive months, has no more than five clients, other than those clients specified in subparagraph (B) of this paragraph, who are residents of this state;
- (D) the person is registered under Section 203 of the Investment Advisers Act of 1940 as an investment adviser or is not registered under Section 203 of the Investment Advisers Act of 1940 because that person is excepted from the definition of an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; however, such exemption shall not apply to such a person if such person fails or refuses to pay the notice filing fee required by paragraph (5) of subsection (a) of Section 412 of this title and such failure or refusal to pay is not promptly remedied in accordance with this title or an order or other administrative action of the Administrator; or
- (E) the person is a full-time employee of this state, any county, municipality or school district of this state; or any other political subdivision of this state; or any agency or corporate or other instrumentality of any such political subdivision; and such person's activities as an investment adviser are required as part of such person's employment with such entity and limited to providing advice to such entity.

(3) The exemption from registration provided by subparagraph (B) of paragraph (2) of this subsection shall not be available to any person who acts as an investment adviser to this state, any county,

municipality or school district of this state, or any other political subdivision of this state; any agency or corporate or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

(d) (1) It is unlawful for any person to transact business in this state as an investment adviser representative unless registered under this act or unless such person is exempt from registration as provided in paragraph (3) of this subsection. It is unlawful for any person required to be registered as an investment adviser under this act, or any person exempt from registration as an investment adviser under this act, to employ, supervise, be represented by or be associated with an investment adviser representative unless the investment adviser representative is registered under this act or unless the investment adviser representative is exempt from registration as provided in paragraph (3) of this subsection.

(2) It is unlawful for an investment adviser representative of an investment adviser exempt from registration under subparagraph (D) of paragraph (2) of subsection (c) of this section to transact business in this state as an investment adviser representative as defined by the United States Securities and Exchange Commission in Rule 203A-3 of the Investment Advisers Act of 1940, if such person has a place of business located within this state unless registered under this act or unless the person is exempt from registration as provided in subparagraphs (B) or (C) of paragraph (3) of this subsection.

(3) Subject to paragraph (4) of this subsection, a person shall be exempt from registration as an investment adviser representative if:

- (A) the person is employed by, supervised by, represents or is associated with an investment adviser required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940, or with an investment adviser who is not registered under Section 203 of the Investment Advisers Act of 1940 because that person is excepted from the definition of an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940 and such investment adviser representative has no place of business located within this state. However, such exemption shall not apply to such a person if his or her affiliated investment adviser fails or refuses to pay the fifty-dollar-fee for investment adviser representatives as required under subsection (a) of Section 202.1 of this title and such failure or refusal to pay is not promptly remedied in accordance with this title or an order or other administrative action of the Administrator;

- (B) the person is licensed as an investment adviser representative under the laws of another state, has no place of business within this state, and the person's only clients in this state are investment advisers, broker-dealers, or financial or institutional investors, whether acting for themselves or as trustees; or
- (C) the person has no place of business located within this state and during any period of twelve (12) consecutive months, has no more than five clients, other than those clients specified in subparagraph (B) of this paragraph, who are residents of this state.

(4) The exemption from registration provided by subparagraph (B) of paragraph (3) of this subsection shall not be available to any person who acts as an investment adviser representative to this state, any county, municipality or school district of this state, or any other political subdivision of this state; any agency or corporate or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

(5) The registration of an investment adviser representative is not effective during any period when the person is not associated with a particular investment adviser registered or exempt from registration under this act. When an investment adviser representative begins or terminates a connection with an investment adviser, or begins or terminates those activities which make the person an investment adviser representative, the investment adviser representative as well as the investment adviser shall promptly notify the Administrator.

(e) Every registration as a broker-dealer, agent, investment adviser or investment adviser representative and every exemption from registration as an investment adviser representative under this section expires on December 31 each year and may be renewed annually upon written application, as specified by the Administrator by rule or order, and payment of the fee set forth in Section 412 of this title without furnishing any further information unless specifically required by the Administrator. Application for renewals must be made no later than December 31 in each year; otherwise, the requirements for initial registration must be satisfied.

(f) For purposes of this section, "place of business" means:

(1) A place or office at which the investment adviser or investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and

(2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

Added by Laws 1959, p. 330, § 201, eff. July 1, 1959. Amended by Laws 1988, c. 108, § 8, eff. Nov. 1, 1988; Laws 1991, c. 79, § 1, eff. Sept. 1, 1991; Laws 1995, c. 196, § 4, eff. July 1, 1995; Laws 1997, c. 279, § 3, eff. July 1, 1997; Laws 1998, c. 152, § 3, eff. July 1, 1998; Laws 1998, c. 412, § 4, eff. July 1, 1998; Laws 2003, c. 493, § 1, eff. Nov. 1, 2003.

NOTE: Laws 1998, c. 141, § 14 repealed by Laws 1998, c. 412, § 6, eff. July 1, 1998.

§71-202. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

NOTE: Prior to repeal, this section was amended to read as follows:

(a) (1) A broker-dealer, agent, investment adviser or investment adviser representative required to be registered under this title may obtain an initial or renewal registration by filing in such form and in such manner as prescribed by rule or order of the Administrator an application, the filing fee set forth in Section 412 of this title and any other information determined to be necessary by the Administrator.

(2) If financial reports required do not coincide with registration dates, such reports for the registrant's preceding fiscal year shall be acceptable unless the Administrator by rule or order otherwise prescribes. The Administrator may by rule or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state.

(b) If no denial order is in effect and no proceeding is pending pursuant to the provisions of Section 204 of this title, registration becomes effective at noon of the forty-fifth day after a complete application is filed and proper payment is made. The Administrator may specify, by rule or order, an earlier effective date, and may defer, by order, the effective date until noon of the forty-fifth day after the filing of any amendment.

(c) When an application is denied or withdrawn, the Administrator shall retain the fee.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(e) The Administrator, by rule, may require a minimum capital for registered broker-dealers and investment advisers.

Added by Laws 1959, p. 330, § 202, eff. July 1, 1959. Amended by Laws 1961, p. 580, § 1; Laws 1968, c. 406, § 2, emerg. eff. May 17, 1968; Laws 1975, c. 135, § 1, emerg. eff. May 19, 1975; Laws 1983, c. 262, § 7, operative July 1, 1983; Laws 1984, c. 55, § 1, eff. Nov. 1, 1984; Laws 1988, c. 108, § 9, eff. Nov. 1, 1988; Laws 1992, c. 241, § 9, eff. July 1, 1992; Laws 1995, c. 196, § 5, eff. July 1, 1995; Laws

1997, c. 279, § 4, eff. July 1, 1997; Laws 2003, c. 493, § 2, eff. Nov. 1, 2003.

§71-202.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-203. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-204. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

NOTE: Prior to repeal, this section was amended to read as follows:

(a) The Administrator may issue a final order denying effectiveness to, or suspending or revoking the effectiveness of, any registration, or condition or limit registration of an applicant or registrant, or impose any sanction authorized by Section 406 of this title if the Administrator finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(1) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or willfully failed to comply with any provision of the Oklahoma Securities Act or a predecessor act or any rule or order under this act or a predecessor act;

(3) has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) is the subject of an order of the Administrator denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an order of the Administrator issued pursuant to Section 406 of this title;

(6) is the subject of an order or other adjudication or determination entered within the past five (5) years by the securities administrator of any other state or by the United States Securities and Exchange Commission or by any other governmental securities agency denying, suspending or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative or the substantial equivalent of those terms as defined in the Oklahoma Securities Act, or is the subject of an order

or other adjudication or determination entered within the past five (5) years by the securities administrator of any other state or by the United States Securities and Exchange Commission or by any other governmental securities agency barring the person from association with any other broker-dealer or investment adviser, or is the subject of an order suspending or expelling the person from a national or international securities exchange or national or international securities association, or is the subject of an order or other adjudication or determination of or by the National Association of Securities Dealers, Inc., or any other self-regulatory organization, suspending, canceling, revoking, or barring the person from membership in said organization or barring the person from association with any other member of said organization, or is the subject of a United States Post Office fraud order; but:

- (A) the Administrator may not institute a revocation or suspension proceeding under this subsection more than one (1) year from the date of the order relied on; and
- (B) may not enter an order under this subsection on the basis of an order under another state act unless that order was based on facts which, but for the situs would currently constitute a ground for an order under this section;

(7) is the subject of a cease and desist order entered after notice and opportunity for hearing by the Administrator, the securities agency or administrator of another state, the United States Securities and Exchange Commission or the Commodity Futures Trading Commission;

(8) has engaged in dishonest or unethical practices in the securities business;

(9) is insolvent, either in the sense that liabilities exceed assets or in the sense that the person cannot meet obligations as they mature; but the Administrator may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

(10) is not qualified on the basis of such factors as training, experience and knowledge of the securities business, except as otherwise provided in subsection (c) of this section; or

(11) has willfully violated any rule of a national or international securities exchange or a national or international securities association with respect to any customer or transaction in this state;

(12) has failed to exercise reasonable supervision of its agents if a broker-dealer or a designated principal, or of its investment adviser representatives if an investment adviser to ensure compliance with the Oklahoma Securities Act;

(13) has failed to pay the proper filing fee; but the Administrator may enter only a denial order under this paragraph, and

shall vacate any such order when the deficiency has been corrected;
or

(14) refuses to allow or otherwise impedes the Administrator from conducting an examination under subsection (d) of Section 203 of this title, refuses access to any registrant's office to conduct such examination, or refuses to provide copies of the records referred to in subsection (a) of Section 203 of this title.

(b) The Administrator may not institute a suspension or revocation proceeding based solely on material facts actually known by the Administrator unless an investigation or proceeding is instituted within one (1) year after the Administrator actually knew the material facts.

(c) The Administrator's determination that an applicant or registrant lacks qualification under paragraph (10) of subsection (a) of this section is limited by the following provisions:

(1) The Administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer if the broker-dealer is an individual; or an agent of the broker-dealer.

(2) The Administrator may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser if the investment adviser is an individual or an investment adviser representative of the investment adviser.

(3) The Administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The Administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The Administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent.

(6) The Administrator may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants.

(d) (1) If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing an order pursuant to subsection (a) of this section, the Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(2) Upon the entry of the summary order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative:

- (A) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after service of the notice is effective;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending final determination of any proceeding under subsection (a) of this section; and
- (D) that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or the Administrator's designee extends the summary order pending a final determination of any proceeding under subsection (a) of this section. If no hearing is requested within thirty (30) days after service of the summary order and none is ordered by the Administrator, the summary order becomes final by operation of law. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a final order shall not be issued pursuant to subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

(e) If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application.

(f) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective sixty (60) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a proceeding under paragraph (2) of subsection (a) of this section

within one (1) year after withdrawal became effective and enter an order as of the last date on which registration was effective.

(g) Except as provided in paragraph (1) of subsection (d) of this section or unless the right to notice and hearing is waived by the person against whom the final order is to be issued, no order may be issued under this section without notice and opportunity for hearing as required by the Administrative Procedures Act. If the person to whom such notice is addressed does not request a hearing within fifteen (15) days after the service of said notice is effective, a final order as provided in subsection (a) of this section may be issued.

Added by Laws 1959, p. 332, § 204, eff. July 1, 1959. Amended by Laws 1963, c. 280, § 1, emerg. eff. June 18, 1963; Laws 1985, c. 287, § 3, emerg. eff. July 23, 1985; Laws 1988, c. 108, § 11, eff. Nov. 1, 1988; Laws 1990, c. 71, § 2, eff. Sept. 1, 1990; Laws 1992, c. 241, § 10, eff. July 1, 1992; Laws 1995, c. 196, § 7, eff. July 1, 1995; Laws 1997, c. 279, § 7, eff. July 1, 1997; Laws 1998, c. 152, § 5, eff. July 1, 1998; Laws 1999, c. 109, § 2, eff. July 1, 1999; Laws 2003, c. 493, § 3, eff. Nov. 1, 2003.

§71-301. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-302. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-303. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-304. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-304.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-305. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-305.1. Repealed by Laws 1987, c. 208, § 120, operative July 1, 1987 and Laws 1987, c. 236, § 203, emerg. eff. July 20, 1987.

§71-305.2. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-306. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

NOTE: Prior to repeal, this section was amended to read as follows:

(a) The Administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the Administrator finds that:

(1) the order is in the public interest; and

(2) (A) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any report under Section 305(i) of this title is incomplete in any material respect or

contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

- (B) any provision of the Oklahoma Securities Act or any rule, order, or condition lawfully imposed under said act has been willfully violated, in connection with the offering, by:
 - (i) the person filing the registration statement,
 - (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or
 - (iii) any underwriter;
- (C) the security registered or sought to be registered is the subject of any administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; provided, however:
 - (i) the Administrator may not institute a proceeding against an effective registration statement under this subparagraph more than one (1) year from the date of the order or injunction relied on, and
 - (ii) may not enter an order under this subparagraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;
- (D) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;
- (E) the offering has worked or tended to work a fraud upon purchasers or would so operate;
- (F) the offering has been or would be made or is being made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options, profits, compensation, or remuneration paid directly or indirectly to any officer, director, employee, contractor or agent;
- (G) when a security is sought to be registered by notification, it is not eligible for such registration;

- (H) when a security is sought to be registered by coordination there has been a failure to comply with the undertaking required by Section 303(b)(4) of this title; or
- (I) an order has been issued by a court of competent jurisdiction under subsection (e) of this section or Section 406 of this title against the issuer of any security registered or sought to be registered under the Oklahoma Securities Act.

The Administrator may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to the Administrator when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.

(b) (1) If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing an order pursuant to subsection (a) of this section, the Administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section.

(2) Upon the entry of the summary order, the Administrator shall promptly notify each person specified in subsection (c) of this section:

- (A) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after service of the notice is effective;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending final determination of any proceeding under subsection (a) of this section; and
- (D) that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or the Administrator's designee extends the summary order pending a final determination of any proceeding under subsection (a) of this section. If no hearing is requested within thirty (30) days after service of the summary order and none is ordered by the Administrator, the summary order becomes final by operation of law. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall

dissolve and a final order shall not be issued pursuant to subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

(c) Except as provided in paragraph (1) of subsection (b) of this section or unless the right to notice and hearing is waived by the person against whom the stop order is issued, no stop order may be issued under this section without notice and opportunity for hearing as required by the Administrative Procedures Act. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the service of said notice is effective, a final order as provided in subsection (a) of this section may be issued.

(d) The Administrator may vacate or modify a stop order if the Administrator finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

(e) The Administrator may apply to the district court of Oklahoma County or the district court of any other county where service can be obtained for an order appointing a conservator of, and directing the conservator to rehabilitate, any issuer upon one or more of the following grounds. That the issuer:

(1) is impaired or insolvent, or is in imminent danger of becoming impaired or insolvent;

(2) has ceased transacting business for a period of one (1) year;

(3) is insolvent and has commenced voluntary liquidation or dissolution, or is attempting to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator;

(4) has refused to comply with any lawful order of the Administrator;

(5) has refused to submit its books, records and accounts relating to its financial affairs to reasonable examination by the Administrator;

(6) has transferred or attempted to transfer substantially its entire property or business, to the detriment of its stockholders; or

(7) has willfully violated its charter or any law of this state.

The conservator may, if all reasonable efforts to rehabilitate the issuer fail, apply to the court for any order directing liquidation and dissolution of any such issuer.

Added by Laws 1959, p. 339, § 306, eff. July 1, 1959. Amended by Laws 1967, c. 395, § 1, emerg. eff. May 23, 1967; Laws 1968, c. 406, § 1, emerg. eff. May 17, 1968; Laws 1992, c. 241, § 14, eff. July 1, 1992; Laws 1995, c. 196, § 11, eff. July 1, 1995; Laws 1997, c. 279, § 11, eff. July 1, 1997; Laws 1998, c. 152, § 8, eff. July 1, 1998; Laws 1999, c. 109, § 4, eff. July 1, 1999; Laws 2003, c. 493, § 4, eff. Nov. 1, 2003.

§71-307. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-401. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-402. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-403. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-404. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-405. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

NOTE: Prior to repeal, this section was amended to read as follows:

(a) The Administrator in his or her discretion:

(1) may make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder; and

(2) may require or permit any person to file a statement in writing, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any investigation or proceeding under this act, the Administrator, or his or her designee, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records deemed relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of Oklahoma county or the district court in any other county where service can be obtained on one or more of the defendants, upon application by the Administrator, may issue to the person an order requiring such person to appear before the Administrator, or the officer designated by the Administrator, there to produce documentary evidence or to testify about the matter under investigation or in question. The court may also grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the Administrator, or his or her designee, or in obedience to the subpoena of the Administrator or his or her designee, or in any proceeding instituted by the Administrator, on the ground that the testimony or evidence (documentary or otherwise) required of the person may tend to

incriminate the person or subject the person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after claiming privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(e) In addition to the investigations authorized by Section 405(a) of this title, the Administrator or a designated member of his staff shall examine as soon as possible all reports filed under this act for the purpose of determining whether additional information is required or whether additional investigation should be made. The Administrator is authorized to require the filing of any additional information which he deems necessary to correct any errors or deficiencies in any reports required to be filed.

Added by Laws 1959, p. 343, § 405, eff. July 1, 1959. Amended by Laws 1978, c. 184, § 3, emerg. eff. April 11, 1978; Laws 1989, c. 150, § 4, operative July 1, 1989; Laws 1995, c. 196, § 15, eff. July 1, 1995; Laws 1997, c. 279, § 15, eff. July 1, 1997; Laws 2003, c. 493, § 5, eff. Nov. 1, 2003.

NOTE: Laws 1978, c. 170, § 2 repealed by Laws 1980, c. 166, § 7.

§71-406. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

NOTE: Prior to repeal, this section was amended to read as follows:

(a) If the Administrator reasonably believes, whether or not based upon an investigation conducted under Section 405 of this title, that a person has violated the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or has engaged in dishonest or unethical practices in the securities business, the Administrator, in addition to any specific power granted by any other section of the Oklahoma Securities Act, may impose one or more of the following sanctions:

(1) issue an order against the person to cease and desist from engaging in such violation or dishonest or unethical practices or doing any act in furtherance thereof;

(2) censure the person, if the person is a registered broker-dealer, agent, investment adviser, or investment adviser representative;

(3) bar or suspend the person from association with a broker-dealer or investment adviser subject to the provisions of the Oklahoma Securities Act;

(4) place limitations on the activities, functions, or operations of the person;

(5) issue an order against a person who willfully violates the Oklahoma Securities Act or a rule or order of the Administrator under

the Oklahoma Securities Act, imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or transaction or of Fifty Thousand Dollars (\$50,000.00) for multiple violations or transactions in a single proceeding or a series of related proceedings; or

(6) recover the costs of the investigation conducted under Section 405 of this title.

(b) Except as provided in subsection (e) of this section or unless the right to notice and hearing is waived by the person against whom the sanction is imposed, the sanctions provided in subsection (a) of this section may be imposed only after notice and hearing as required by the Administrative Procedures Act. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the service of notice is effective, a final order may be issued.

(c) Imposition of the sanctions under this section is limited as follows:

(1) If the Administrator revokes the effectiveness of the registration of a broker-dealer, agent, investment adviser or investment adviser representative under Section 204 of this title or bars a person from association with a broker-dealer or investment adviser under this section or Section 204 of this title, the imposition of that sanction precludes imposition of the sanction specified in paragraph (5) of subsection (a) of this section; and

(2) The imposition by the Administrator of one or more sanctions under subsection (a) of this section with respect to a specific violation or transaction precludes the Administrator from later imposing any other sanctions under paragraphs (1) through (5) of subsection (a) of this section with respect to the violation or transaction. The Administrator however is not precluded from bringing an action under Section 406.1 of this title in addition to the imposition of one or more sanctions under subsection (a) of this section with respect to the violation or transaction.

(d) For purposes of determining any sanction to be imposed under paragraphs (1) through (5) of subsection (a) of this section, the Administrator shall consider, among other factors, the frequency and persistence of the conduct constituting a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or involving dishonest or unethical practices in the securities business, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

(e) (1) If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing a cease and desist order pursuant to paragraph (1) of subsection (a) of this section, the Administrator may issue a

summary order to cease and desist pending final determination of any proceeding under this section.

(2) Upon the entry of the summary order, the Administrator shall promptly notify the person subject to the summary order:

- (A) that the summary order has been entered and the reasons therefor;
- (B) that the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after service of the notice is effective;
- (C) that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending final determination of any proceeding under paragraph (1) of subsection (a) of this section; and
- (D) that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

(3) The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or the Administrator's designee extends the summary order pending a final determination of any proceeding under paragraph (1) of subsection (a) of this section. If no hearing is requested within thirty (30) days after service of the summary order and none is ordered by the Administrator, the summary order becomes final by operation of law. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a final order shall not be issued pursuant to paragraph (1) of subsection (a) of this section except upon reasonable notice and opportunity for a hearing.

Added by Laws 1959, p. 344, § 406, eff. July 1, 1959. Amended by Laws 1984, c. 130, § 1, operative Nov. 1, 1984; Laws 1987, c. 145, § 1, eff. Nov. 1, 1987; Laws 1988, c. 108, § 17, eff. Nov. 1, 1988; Laws 1990, c. 71, § 3, eff. Sept. 1, 1990; Laws 1995, c. 196, § 16, eff. July 1, 1995; Laws 1997, c. 279, § 16, eff. July 1, 1997; Laws 1998, c. 152, § 9, eff. July 1, 1998; Laws 1999, c. 109, § 6, eff. July 1, 1999; Laws 2003, c. 493, § 6, eff. Nov. 1, 2003.

§71-406.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

NOTE: Prior to repeal, this section was amended to read as follows:

(a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or that a person has engaged or is about to engage in dishonest or unethical practices in the securities business, the Administrator,

prior to, concurrently with, or subsequent to an administrative proceeding, may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and the district court may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) Upon a showing of a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or conduct involving dishonest or unethical practices in the securities business:

- (i) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction, or a writ of prohibition or mandamus;
- (ii) a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or of Fifty Thousand Dollars (\$50,000.00) for multiple violations in a single proceeding or a series of related proceedings;
- (iii) a declaratory judgment;
- (iv) restitution to investors;
- (v) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and the appointment of a receiver or conservator for the defendant or the defendant's assets; and
- (vi) other relief the court deems just.

(2) Upon a showing that the defendant is about to violate the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or that the defendant is about to engage in dishonest or unethical practices in the securities business only:

- (i) a temporary restraining order; or
- (ii) a temporary or permanent injunction; or
- (iii) a writ of prohibition or mandamus.

(b) In determining the appropriate relief under subsection (a) of this section, the court shall consider any enforcement actions taken and/or sanctions that may have been imposed by the Administrator under Section 406 of this title in connection with the subject transactions.

(c) The Administrator shall not be required to post a bond in an action under this section.

(d) Upon a showing by the securities agency or administrator of another state that a person has violated the securities act of that state or a rule or order of the securities agency or administrator of that state, the court, in addition to any other legal or equitable remedies, may impose one or more of the following remedies:

(1) appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state; and

(2) other relief the court considers just.

(e) No costs shall be assessed for or against the Administrator in any proceeding under the Oklahoma Securities Act brought by or against it in any court except as otherwise provided by law.

Added by Laws 1987, c. 145, § 2, eff. Nov. 1, 1987. Amended by Laws 1990, c. 71, § 4, eff. Sept. 1, 1990; Laws 1997, c. 279, § 17, eff. July 1, 1997; Laws 2003, c. 493, § 7, eff. Nov. 1, 2003.

§71-407. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-408. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-409. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

NOTE: Prior to repeal, this section was amended to read as follows:

(a) Any person aggrieved by a final order of the Administrator may obtain a review by the Commission by filing with the Administrator, within fifteen (15) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part and stating the person's specific grounds therefor. The petition; the record upon which the final order was issued; and written briefs submitted by the appealing parties and the Administrator shall be reviewed by the Commission. The costs of preparing the record of the administrative hearing shall be borne by the appealing parties. Oral argument by all parties may be heard by the Commission en banc if requested by an appealing party. Other than newly discovered evidence, additional evidence may only be presented by the appealing party and/or the Administrator on the request of the Commission. Upon the written request of the party on whose behalf the appeal is brought, or upon the party's own motion, the Administrator shall cause complete stenographic notes to be taken of the proceeding before the Commission. If requested by the appealing party, the cost of taking and transcribing such notes shall be borne by the said appealing party. If such notes are taken upon the motion of the Administrator, the cost shall be borne by the Department. The Commission or a majority thereof shall make such order as is deemed proper, just, and equitable within sixty (60) days of receipt by the Administrator of the written petition of the appealing party or at such later time as agreed to by all parties.

(b) Appeals by any person aggrieved by a final order of the Commission, except a final order of the Commission to cease and desist as provided for in paragraph (1) of subsection (a) of Section 406 of this title, shall be taken to the Supreme Court of Oklahoma within thirty (30) days of the date that a copy of the order is mailed to the person, as shown by the certificate of mailing attached to the order. Any person aggrieved by a final order of the Commission to cease and desist as provided for in paragraph (1) of subsection (a) of Section 406 of this title shall be taken to the

district court of Oklahoma County within thirty (30) days of the date that a copy of the order is mailed to the person, as shown by the certificate of mailing attached to the order. The proceedings for review shall be as now prescribed by law and by rules of the reviewing court, subject to the power of the reviewing court to make other and further rules with reference thereto.

(c) The commencement of proceedings under this section before the Commission shall not operate as a stay of the Administrator's order, unless so ordered by the Commission. The commencement of proceedings under this section before the Supreme Court shall not operate as a stay of the Commission's order, unless so ordered by the Court.

Added by Laws 1959, p. 345, § 409, eff. July 1, 1959. Amended by Laws 1961, p. 586, § 1; Laws 1984, c. 130, § 2, operative Nov. 1, 1984; Laws 1990, c. 71, § 5, eff. Sept. 1, 1990; Laws 1992, c. 241, § 17, eff. July 1, 1992; Laws 1998, c. 152, § 11, eff. July 1, 1998; Laws 2003, c. 493, § 8, eff. Nov. 1, 2003.

§71-410. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-411. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-411.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-412. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

NOTE: Prior to repeal, this section was amended to read as follows:

(a) Unless otherwise provided for by law, the following shall be the fees charged pursuant to the provisions of the Oklahoma Securities Act:

- (1) Broker-dealer registration fee or renewal fee.....\$300.00
- (2) Broker-dealer or issuer agent or broker-dealer principal registration fee or renewal fee\$50.00
- (3) Broker-dealer agent on an inactive basis, renewal fee.....\$10.00
- (4) Investment adviser registration fee or renewal fee.....\$300.00
- (5) Investment adviser annual notice filing fee.....\$300.00
- (6) Investment adviser representative registration fee or renewal fee\$50.00
- (7) Mass transfer fee.....\$10.00
- (8) Mailing list fee...\$30.00 per year

per transferee

- (9) Review of sales literature package
.....\$50.00
- (10) Broker-dealer or investment
adviser financial or operating
reports.....\$50.00
- (11) Issuer sales reports.....\$50.00
- (12) Notice of exemption filing or
request for order of exemption
.....\$250.00
- (13) Interpretive opinion or no-action
request.....\$250.00
- (14) Affidavit request.....\$10.00
- (15) Service of process upon the
Administrator.....\$10.00
- (16) Amendments to registration
statements or notice filings
pursuant to Section 305.2 of
this title involving changes to
the issuer's application or
notice filing form:
 - (A) examination fee...\$50.00; and
 - (B) a filing fee computed in the
same manner as the filing fee
required pursuant to
paragraph (1) of subsection
(b) of this section for any
additional securities being
registered.
- (17) Copying fee.
 - (A) 8 1/2" by 14" or smaller\$.25
per page
 - (B) Larger than 8 1/2" by 14"
.....\$1.00 per page
 - (C) Certified copy 8 1/2" by 4"
or smaller...\$1.00 per page
 - (D) Certified copy larger than
8 1/2" by 14"..\$2.00 per
page
- (18) Document search fee for commercial
purpose.....\$20.00 per hour
- (19) Notice filing fee for a federal
covered security under Section
18 (b) (4) of the Securities Act
of 1933.....\$250.00

(b) For the purpose of registering securities under this act, any person filing a registration statement shall pay an examination fee of Two Hundred Dollars (\$200.00) and a filing fee computed upon

the aggregate offering price of the securities sought to be registered in Oklahoma as follows:

a fee equal to one-tenth of one percent (1/10 of 1%) of said price; provided, in no event shall the filing fee be less than Two Hundred Dollars (\$200.00) or more than Two Thousand Five Hundred Dollars (\$2,500.00); however, for securities registered pursuant to Section 304.1 of this title, the filing fee shall be computed as follows: a fee equal to one-twentieth of one percent (1/20 of 1%) of the aggregate offering price; provided, in no event shall the filing fee be less than One Hundred Dollars (\$100.00) or more than Two Thousand Five Hundred Dollars (\$2,500.00).

(c) Any person making a notice filing pursuant to Section 305.2(a) of this title, or renewing such a filing, shall pay a filing fee of Five Hundred Dollars (\$500.00) with each such notice or renewal filed.

(d) All fees and other charges collected by the Administrator shall be deposited in the General Revenue Fund with the State Treasurer, except for the fees deposited in the Oklahoma Department of Securities Revolving Fund and the amounts deposited in the Oklahoma Department of Securities Investor Education Revolving Fund.

(e) There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Securities to be designated the "Oklahoma Department of Securities Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fees and other charges collected by the Administrator as follows:

- (1) the fees collected pursuant to paragraphs (1), (4), (5), (8), (14), (15), (17), and (18) of subsection (a) of this section;
- (2) the fees collected pursuant to the provisions of Section 402 of this title as provided in paragraph (9) of subsection (a) of this section;
- (3) the examination fees designated in paragraph (16) of subsection (a) and in subsection (b) of this section;
- (4) the amounts collected pursuant to subsection (f) of Section 411 of this title set forth in paragraph (13) of subsection (a) of this section; and
- (5) One Hundred Fifty Dollars (\$150.00) of each filing fee collected pursuant to subsection (c) of this section.

All monies accruing to the credit of the Oklahoma Department of Securities Revolving Fund are hereby appropriated and may be budgeted and expended by the Oklahoma Department of Securities as may be necessary to perform the duties imposed upon the said Department by law. Expenditures from the Oklahoma Department of Securities Revolving Fund shall be made upon warrants issued by the State

Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

(f) There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Securities to be designated the "Oklahoma Department of Securities Investor Education Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all amounts collected pursuant to court order or judgment in actions brought by the Administrator, and amounts received in multistate settlements participated in by the Department, and interest attributable to the investment of the fund that shall be deposited in the Oklahoma Department of Securities Investor Education Revolving Fund. The Fund may be invested in any investment instrument allowed by Oklahoma Statutes to the State Treasurer for the investment of state funds. Any amounts received from any court settlement in excess of One Million Dollars (\$1,000,000.00) shall be transferred to the General Fund. The Administrator shall use the moneys in this fund exclusively for the specific purposes of research for education and education of Oklahoma residents in matters concerning securities laws and general investor protection. All monies accruing to the credit of the Oklahoma Department of Securities Investor Education Revolving Fund are hereby appropriated and may be budgeted and expended by the Oklahoma Department of Securities as may be necessary to perform the duties imposed upon the said Department by law. Expenditures from the Oklahoma Department of Securities Investor Education Revolving Fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

(g) There is hereby created a petty cash fund for the Oklahoma Department of Securities. The Director of State Finance and the Administrator are hereby authorized and it shall be their duty to fix the maximum amount of the petty cash fund, not to exceed Five Hundred Dollars (\$500.00). The Director of State Finance shall prescribe all forms, systems, and procedures for administering the petty cash fund. The fund shall be used solely to pay:

(1) examination, investigation and litigation expenses of the Oklahoma Department of Securities, including, but not limited to, court costs, filing fees, copying fees, and witness fees, and

(2) incidental operating expenses of the Oklahoma Department of Securities not to exceed One Hundred Dollars (\$100.00) per transaction.

(h) Once paid, fees shall be nonrefundable.

Added by Laws 1959, p. 346, § 412, eff. July 1, 1959. Amended by Laws 1977, c. 233, § 7, emerg. eff. June 15, 1977; Laws 1981, c. 248, § 6, emerg. eff. June 25, 1981; Laws 1983, c. 262, § 14, operative July 1, 1983; Laws 1984, c. 201, § 3, operative July 1, 1984; Laws 1985, c. 287, § 4, emerg. eff. July 23, 1985; Laws 1986, c. 189, § 3,

operative July 1, 1986; Laws 1986, c. 223, § 52, operative July 1, 1986; Laws 1987, c. 208, § 97, operative July 1, 1987; Laws 1987, c. 236, § 98, emerg. eff. July 20, 1987; Laws 1988, c. 108, § 20, eff. Nov. 1, 1988; Laws 1988, c. 175, § 3, operative July 1, 1988; Laws 1988, c. 204, § 16, operative July 1, 1988; Laws 1989, c. 150, § 6, operative July 1, 1989; Laws 1992, c. 241, § 20, eff. July 1, 1992; Laws 1994, c. 270, § 2, operative July 1, 1995; Laws 1995, c. 196, § 18, eff. July 1, 1995; Laws 1997, c. 279, § 21, eff. July 1, 1997; Laws 1998, c. 152, § 12, eff. July 1, 1998; Laws 1999, c. 109, § 8, eff. July 1, 1999; Laws 2000, c. 310, § 3, eff. July 1, 2000; Laws 2001, c. 289, § 1, emerg. eff. May 31, 2001; Laws 2002, c. 422, § 1, eff. July 1, 2002; Laws 2003, c. 493, § 9, eff. Nov. 1, 2003.

§71-412.1. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-413. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-414. Definitions.

As used in this act:

1. "Multinational take-over bid" means the acquisition by a multinational corporation of or offer by a multinational corporation to acquire, pursuant to a tender offer or request or invitation for tenders, any equity security of a multinational corporation organized under the laws of this state or having its principal place of business and substantial assets within this state, if after acquisition thereof the offeror would, directly or indirectly, be a record or beneficial owner of more than ten percent (10%) of any class of the issued and outstanding equity securities of such corporation. "Multinational corporation take-over bid" shall not mean:

- a. bids made by a dealer for his own account in the ordinary course of his business of buying and selling such security,
- b. an offer to acquire such equity security solely in exchange for other securities, or the acquisition of such equity security pursuant to such offer, for the sole account of the offeror, in good faith and not for the purpose of avoiding this act, and not involving any public offering of such other securities within the meaning of section 4 of title I of the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C. 77d (2); as amended,
- c. any other offer to acquire an equity security, or the acquisition of such equity security pursuant to such offer, for the sole account of the offeror, from not more than fifty persons, in good faith and not for the purpose of avoiding this act, and

d. any tender offer or request or invitation for tenders to which the target company consents, by action of its board of directors, if such board of directors has recommended acceptance thereof to shareholders and the terms thereof, including any inducements to officers or directors which are not made available to all shareholders, have been furnished to shareholders;

2. "Offeror" means a person who makes, or in any way participates or aids in making, a multinational corporation take-over bid, and includes persons acting jointly or in concert, or who intend to exercise jointly or in concert any voting rights attached to the securities for which such multinational corporation take-over bid is made;

3. "Offeree" means the beneficial or record owner of securities which an offeror acquires or offers to acquire in connection with a multinational corporation take-over bid;

4. "Multinational corporation" means a corporation incorporated in or having assets or operations in one or more countries other than the United States, or a corporation controlling, controlled by or under common control with a corporation incorporated in or having assets or operations in one or more such countries;

5. "Target company" means a corporation whose securities are or are to be the subject of a multinational corporation take-over bid;

6. "Equity security" means any shares or similar securities, or any securities convertible into such securities, or carrying any warrant or right to subscribe to or purchase such securities, or any such warrant or right, or any other security which, for the protection of security holders, is treated as an equity security pursuant to regulations of the Oklahoma Securities Commission; and

7. "Administrator" means the Securities Administrator appointed by the Oklahoma Securities Commission.

Added by Laws 1980, c. 300, § 1, emerg. eff. June 12, 1980.

§71-415. Public announcement of take-over bid - Filing of required information - Hearings - Information to be filed - Costs.

A. No offeror shall make a multinational corporation take-over bid unless twenty (20) days prior thereto or such shorter period as the Administrator may order, but not less than five (5) days, such offeror announces publicly the terms of the proposed multinational corporation take-over bid and files with the Administrator and the target company copies of all information required by this section, and either:

1. Within five (5) days following such filing, no hearing is ordered by the Administrator or requested by the target company;

2. A hearing is requested by the target company within such time but the Administrator finds that no cause for hearing exists; or

3. A hearing is ordered within such time and upon such hearing the Administrator adjudicates that the offeror proposes to make fair, full and effective disclosure to offerees of all information material to a decision to accept or reject the offer.

B. No offeror shall make a multinational corporation take-over bid if he owns five percent (5%) or more of the issued and outstanding equity securities of any class of the target company, any of which were purchased within one (1) year before the proposed multinational corporation take-over bid, and the offeror, before making any such purchase, or before thirty (30) days following the effective date of this act, whichever is later, failed to publicly announce his intention to gain control of the target company, or otherwise failed to make fair, full and effective disclosure of such intention to the persons from whom he acquired such securities.

C. The information to be filed with the Administrator and the target company pursuant to this section shall include:

1. Copies of all prospectuses, brochures, advertisements, circulars, letters or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer;

2. The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected;

3. The source and amount of funds or other consideration used or to be used in acquiring any equity security, including a statement describing any securities, other than the existing capital stock or long-term debt of the offeror, which are being offered in exchange for the equity securities of the target company;

4. A statement of any plans or proposals which the offeror, upon gaining control, may have to liquidate the target company, sell its assets, effect a merger or consolidation of it, or make any other major change in its business, corporate structure, management personnel, or policies of employment;

5. The number of shares of any equity security of the target company of which each offeror is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name and address of each person defined in this act as an offeror;

6. Particulars as to any contracts, arrangements or understandings to which an offeror is party with respect to any equity security of the target company, including, without limitation, transfers of any equity security, joint venture, loan or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements or understandings have been entered into;

7. Complete information on the organization and operations of the offeror including, without limitation, the year of organization,

form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long-term debt, financial statements for the current period and for the three most recent annual accounting periods, a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past five (5) years, the names of all directors and executive officers together with biographical summaries of each for the preceding five (5) years to date, and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past three (3) years, or in any proposed material transactions, to which the offeror or any of its subsidiaries was or is to be a party; and

8. Such other and further documents, exhibits, data and information as may be required by rule or order of the Administrator, or as may be necessary to make fair, full and effective disclosure to offerees of all information material to a decision to accept or reject the offer.

D. Any hearing pursuant to this section shall be held within forty (40) days of the date a filing is made pursuant to this section. Adjudications made pursuant to this section shall be made within sixty (60) days after such filing. If upon hearing, the Administrator finds that the multinational corporation take-over bid is in violation of this act or that effective provision is not made for fair and full disclosure to offerees of all information material to a decision to accept or reject the offer, he shall so adjudicate. If he finds that the multinational corporation take-over bid would comply with this act if amended in certain respects, he shall so adjudicate. If he finds that the multinational corporation take-over bid is not in violation of this act and that effective provision is made for fair and full disclosure to offerees of all information material to a decision to accept or reject the offer, he shall so adjudicate.

E. Upon filing an application with the Administrator for a hearing under this section, the target company shall pay:

1. The Oklahoma Department of Securities a nonrefundable fee of Five Hundred Dollars (\$500.00);

2. Such additional amount as a deposit as the Administrator may estimate will be needed to defray the costs of investigation and hearing including but not limited to technical, expert and special services; and

3. After the hearing, the additional costs actually incurred in excess of the deposit plus the fee. All payments received from the target company shall be paid into an agency special account and any unexpended portion shall be refunded therefrom, pursuant to the provisions of Sections 7.1 through 7.5a of Title 62 of the Oklahoma Statutes. Added by Laws 1980, c. 300, § 2, emerg. eff. June 12, 1980.

§71-416. Statutory procedure must be followed.

No offeror may conclude a multinational corporation take-over bid or pay for any securities prior to the conclusion of the procedures set forth in this act. Added by Laws 1980, c. 300, § 3, emerg. eff. June 12, 1980.

§71-417. Discrimination prohibited.

No offeror shall make a multinational corporation take-over bid which is not made to all holders residing in this state of the equity security that is the subject of such multinational corporation take-over bid, or which is not made to such holders on the same terms as such multinational corporation take-over bid is made to holders of such equity security not residing in this state. If an offeror makes a tender offer or request or invitation for tenders for less than all the outstanding equity securities of a class, and if a greater number of securities is deposited pursuant thereto within ten (10) days after copies of the offer or request or invitation for tenders are first published or sent or given to security holders that such offeror is bound or willing to take up and pay for, the securities shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each offeree. This section shall apply to securities deposited within ten (10) days after notice of an increase in the consideration offered to security holders, as described in this section, is first published or sent or given to security holders. If the terms of a multinational corporation take-over bid are changed before its expiration by increasing the consideration offered to offerees, the offeror shall pay the increased consideration for all equity securities taken up, whether the same are deposited or taken up before or after the change in the terms of the multinational corporation take-over bid. Added by Laws 1980, c. 300, § 4, emerg. eff. June 12, 1980.

§71-418. Copies of information to be filed with certain regulatory bodies.

If the offeror or the target company is a banking corporation subject to regulation by the Banking Department, a building and loan association subject to regulation by the Building and Loan Board, or a public utility corporation subject to regulation by the Corporation Commission, the Administrator shall forthwith, upon receipt of the

filing required under this act, furnish a copy of such filing to the regulatory body having jurisdiction over the offeror or target company.

Added by Laws 1980, c. 300, § 5, emerg. eff. June 12, 1980.

§71-419. Liabilities, remedies and penalties.

An offeror is subject to the liabilities, penalties and other provisions applicable to a seller and an offeree is entitled to the remedies applicable to a purchaser, as set forth in Sections 402 et seq. of this title.

Added by Laws 1980, c. 300, § 6, emerg. eff. June 12, 1980.

§71-420. Rules and regulations.

The Administrator may prescribe reasonable rules and regulations:

1. Defining fraudulent, evasive, deceptive or grossly unfair practices in connection with multinational corporation take-over bids, and the terms used in this act;

2. Exempting from this act multinational corporation take-over bids not made for the purpose of, and not having the effect of, changing or influencing the control of a target company; and

3. Covering such other matters as are necessary to give effect to this act.

Added by Laws 1980, c. 300, § 7, emerg. eff. June 12, 1980.

§71-421. Exemptions.

This act shall not apply when:

1. The offeror or the target company is a public utility or a public utility holding company as defined in Section 2 of the "Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 U.S.C. 79, as amended, and the multinational corporation take-over bid is subject to approval by the appropriate federal agency as provided in such act;

2. The offeror or the target company is a bank or a bank holding company as subject to the "Bank Holding Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, and subsequent amendments thereto, and the multinational corporation take-over bid is subject to approval by the appropriate federal agency as provided in such act;

3. The offeror or the target company is a savings and loan holding company as defined in Section 2 of the "Savings and Loan Holding Company Amendments of 1967," 82 Stat. 5, 12 U.S.C. 1730A, as amended, and the multinational corporation take-over bid is subject to approval by the appropriate federal agency as provided in such act;

4. The offeror and the target company are banks and the offer is part of a merger transaction subject to approval by appropriate federal supervisory authorities; and

5. The offeror or target company is an insurance company regulated under the Oklahoma Insurance Code.
Added by Laws 1980, c. 300, § 8, emerg. eff. June 12, 1980.

§71-431. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.

§71-432. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.

§71-433. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.

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§71-448. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.

§71-449. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.

§71-450. Repealed by Laws 1985, c. 285, § 16, emerg. eff. July 22, 1985.

§71-451. Short title.

Sections 1 through 12 of this act shall be known and may be cited as the "Oklahoma Take-over Disclosure Act of 1985".

Added by Laws 1985, c. 285, § 1, emerg. eff. July 22, 1985.

§71-452. Definitions.

As used in this act:

1. "Administrator" means the Administrator of the Department of Securities;
2. "Affiliate" of a person means any person controlling, controlled by or under common control with such person;
3. "Associate" of a person means any person acting jointly or in concert with such person for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of an issuer;
4. "Equity security" means:
 - a. any stock or similar security,
 - b. any security convertible, with or without consideration, into such a security,
 - c. carrying any warrant or right to subscribe to or purchase such a security,
 - d. any such warrant or right, or
 - e. any other security which the Administrator shall deem to be of similar nature and consider necessary or appropriate, by such rules as he may prescribe in the public interest and for the protection of investors, to treat as an equity security;
5. "Offeror" means a person who makes or in any way participates in making a take-over offer. Offeror does not include any bank or

broker-dealer loaning funds to an offeror in the ordinary course of its business, or any bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and not otherwise participating in the take-over offer;

6. "Offeree" means the beneficial owner, residing in Oklahoma, of equity securities which an offeror offers to acquire in connection with a take-over offer;

7. "Take-over offer" means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if the offeror discloses its intention that after the acquisition of all securities acquired pursuant to the offer either (1) the offeror would be directly or indirectly a beneficial owner of more than ten percent (10%) of any class of the outstanding equity securities of the target company or (2) the beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent (5%). Clause (2) does not apply if the offeror discloses its intentions that after the acquisition of all securities acquired pursuant to the offer the offeror would not be directly or indirectly a beneficial owner of more than ten percent (10%) of any class of the outstanding equity securities of the target company. Take-over offer does not include:

- a. an offer to exchange the securities of one issuer for the securities of another issuer, if the offer is registered or exempted from registration under the Oklahoma Securities Act, Section 1 et seq. of Title 71 of the Oklahoma Statutes,
- b. an offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the issuer, would not result in the offeror having acquired more than two percent (2%) of this class during the preceding twelve-month period,
- c. an offer by the issuer to acquire its own equity securities, or
- d. an offer in which the target company is an insurance company subject to regulation by the Insurance Commission of this state, a financial institution regulated by the Oklahoma Commissioner of Banking or a public service utility subject to regulation by the Corporation Commission of this state;

8. "Target company" means an issuer of publicly traded equity securities of which at least twenty percent (20%) of its equity securities are beneficially held by residents of this state and which has substantial assets in this state. For the purpose of this paragraph, an equity security is publicly traded if a trading market

exists for the security at the time the offeror makes a take-over offer for the security. A trading market exists if the security is traded on a national securities exchange or on the over-the-counter market; and

9. "Beneficial owner" includes, but is not limited to, any person who directly or indirectly through any contract, arrangement, understanding, relationship or otherwise has or shares the power to vote or direct the voting of a security and/or the power to dispose of, or direct the disposition of, the security. "Beneficial ownership" includes, but is not limited to, the right, exercisable within sixty (60) days, to acquire securities through the exercise of options, warrants or rights or the conversion of convertible securities, or otherwise. The securities subject to these options, warrants, rights or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by this person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person. A person shall be deemed the beneficial owner of securities beneficially owned by:

- a. any relative or spouse or relative of the spouse residing in the home of this person,
- b. any trust or estate in which this person owns ten percent (10%) or more of the total beneficial interest or serves as trustee or executor,
- c. any corporation or entity in which this person owns ten percent (10%) or more of the equity, or
- d. any affiliate or associate of this person.

Added by Laws 1985, c. 285, § 2, emerg. eff. July 22, 1985.

§71-453. Effective take-over offer required - Registration statement - Suspension of take-over offer and hearing.

A. It is unlawful for any person to make a take-over offer or to acquire any equity securities pursuant to the offer, unless the offer is effective under the provisions of this act. A take-over offer is effective when the offeror files with the Administrator a registration statement containing the information prescribed in subsection F of this section. The offeror shall deliver a copy of the registration statement by certified mail to the target company at its principal office and publicly disclose the material terms of the proposed offer, not later than the date of filing of the registration statement. Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers maintaining an office in this state currently quoting the security.

B. The registration statement shall be filed on forms prescribed by the Administrator of the Department of Securities, shall be accompanied by a consent by the offeror to service of process and the

filing fees specified in Section 8 of this act and shall contain the following information:

1. All of the information specified in subsection F of this section;

2. Two (2) copies of all solicitation materials intended to be used in the take-over offer in the form proposed to be published or sent or delivered to offerees;

3. If the offeror is other than a natural person, the following information shall be included:

- a. information concerning its organization and operations, including the year, form and jurisdiction of its organization,
- b. a description of each class of equity security and long-term debt,
- c. a description of business conducted by the offeror and its subsidiaries and any material changes therein during the past three (3) years,
- d. a description of the location and character of the principal properties of the offeror and its subsidiaries,
- e. a description of any material pending legal or administrative proceedings in which the offeror or any of its subsidiaries is a party,
- f. the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past three (3) years, and
- g. financial statements of the offeror in such form and for such period of time as the Administrator may by rule prescribe; and

4. If the offeror is a natural person, the following information shall be included:

- a. information concerning his identity and background, including his business activities and affiliations during the past three (3) years, and
- b. a description of any material pending legal or administrative proceedings in which the offeror is a party.

If a take-over offer is subject to Section 14(d) of the Securities Exchange Act of 1934, the form and content of the registration statement shall include the same as the form and content of any such statement and amendments required to be filed with the United States Securities and Exchange Commission. If the statement and amendments filed with the United States Securities and Exchange Commission provide the information required to be disclosed by this act, the filing of same with the Administrator shall satisfy the requirement for the filing of a registration statement under this section. The offeror must comply with all other requirements of this section.

C. Registration is not deemed approval by the Administrator and any representation to the contrary is unlawful.

D. Within three (3) calendar days of the date of filing of the registration statement, the Administrator may by order summarily suspend the effectiveness of the take-over offer if the Administrator determines that the registration statement does not contain all of the information specified in subsection F of this section or that the take-over offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the take-over offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subsection E of this section.

E. A hearing shall be scheduled by the Administrator with respect to each suspension under this section and shall be held within ten (10) calendar days of the date of the suspension. The Oklahoma Administrative Procedures Act, Section 301 et seq. of Title 75 of the Oklahoma Statutes, and the administrative procedures of the Oklahoma Securities Commission and Department of Securities shall not apply to the hearing. The Administrator's determination made following the hearing shall be made within three (3) calendar days after such hearing has been completed, but not more than sixteen (16) calendar days after the date of the suspension. The Administrator may prescribe different time limits than those specified in this subsection by rule or order. If, based upon the hearing, the Administrator finds that the take-over offer fails to provide for full and fair disclosure to offerees of all material information concerning the offer, or that the take-over offer is in material violation of any provision of this act, the Administrator shall permanently suspend the effectiveness of the take-over offer, subject to the right of the offeror to correct disclosure and other deficiencies identified by the Administrator and to reinstitute the take-over offer by filing a new or amended registration statement pursuant to Section 3 of this act.

F. The form required to be filed by paragraph 1 of subsection B of this section shall contain the following information:

1. The identity and background of all persons on whose behalf the acquisition of any equity security of the issuer has been or is to be affected;

2. The source and amount of funds or other consideration used or to be used in acquiring any equity security, including if applicable:

- a. a statement describing any securities which are being offered in exchange for the equity securities of the issuer, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration,
- b. a description of the material terms of any financing arrangements, and

c. the names of the parties from whom the funds were borrowed;

3. If the purpose of the acquisition is to gain control of the target company:

- a. a statement of any plans or proposals which the person has, upon gaining control:
- (1) to liquidate the issuer, sell its assets, effect its merger or consolidation,
 - (2) to change the location of its principal executive office or of a material portion of its business activities,
 - (3) to change its management or policies of employment, and
 - (4) to materially alter its relationship with suppliers or customers or the communities in which it operates, or make any other major change in its business, corporate structure, management or personnel, and
- b. other information which would affect the shareholders' evaluation of the acquisition;

4. The number of shares of any equity security of the issuer owned beneficially by the person and any affiliate or associate of the person, together with the name and address of each affiliate or associate; and

5. The material terms of any contract, arrangement or understanding with any other person with respect to the equity securities of the issuer whereby the person filing the statement has or will acquire any interest in additional equity securities of the issuer, or is or will be obligated to transfer any interest in the equity securities to another.

Added by Laws 1985, c. 285, § 3, emerg. eff. July 22, 1985.

§71-454. Solicitation materials - Filing - Prohibited use.

Copies of all advertisements, circulars, letters or other materials published by the offeror or the target company, soliciting or requesting the acceptance or rejection of the take-over offer, shall be filed with the Administrator of the Department of Securities and sent to the target company or offeror, respectively, not later than the time copies of such solicitation materials are first published or used or sent to offerees. The Administrator may prohibit the use of any solicitation materials deemed false or misleading.

Added by Laws 1985, c. 285, § 4, emerg. eff. July 22, 1985.

§71-455. Fraudulent, deceptive and manipulative acts prohibited.

It is unlawful for any offeror or target company or any controlling person of an offeror or target company or any broker-

dealer acting on behalf of an offeror or target company to engage in any fraudulent, deceptive or manipulative acts or practices in connection with a take-over offer. Fraudulent, deceptive and manipulative acts or practices include without limitation:

1. The publication or use in connection with the offer of any false statement of a material fact or the omission to state a material fact necessary to make the statements made not misleading;

2. The sale by any controlling shareholders of a target company of any or all of their equity securities to the offeror for a consideration greater than that to be paid other shareholders pursuant to the take-over offer or the purchase of any of the securities of a controlling shareholder of the target company by the offeror for a consideration greater than that to be paid other shareholders, the terms of which are not disclosed to the other shareholders;

3. The refusal by a target company to permit an offeror who is a shareholder of record to examine its list of shareholders, and to make extracts therefrom, pursuant to the applicable corporation statutes, for the purpose of making a take-over offer in compliance with this act, or in lieu thereof, to mail any solicitation materials published by the offeror to its security holders with reasonable promptness after receipt from the offeror of such materials together with the reasonable expenses of postage and handling; and

4. The solicitation of any offeree for acceptance or rejection of a take-over offer or acquisition of any equity security pursuant to a take-over offer before the take-over offer is effective under this act or while the offer is suspended under this act.

Added by Laws 1985, c. 285, § 5, emerg. eff. July 22, 1985.

§71-456. Actions of offeror - Limitations.

A. No offeror may make a take-over offer which is not made to shareholders in this state on substantially the same terms as the offer is made to shareholders outside of this state.

B. An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a take-over offer may be withdrawn by or on behalf of any offeree at any time within seven (7) days from the date the offer has become effective under this act and after sixty (60) days from the date the offer has become effective under this act, except as the Administrator of the Department of Securities may otherwise prescribe by rule or order for the protection of investors.

C. If an offeror makes a take-over offer for less than all the outstanding equity securities of any class, and if the number of securities deposited or tendered pursuant thereto within ten (10) days after the offer has become effective under this act and copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to security holders is greater

than the number the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered by each offeree.

D. If an offeror varies the terms of a take-over offer before its expiration date by increasing the consideration offered to security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether such securities have been accepted by the offeror before or after the variation in the terms of the offer.

E. No offeror may make a take-over offer or acquire any equity securities in this state pursuant to the take-over offer, at any time when any injunction or cease and desist order is in effect against the offeror based upon a violation of any provision of this act or the Oklahoma Securities Act.

F. No offeror may acquire, remove or exercise control, directly or indirectly, over any target company assets located in this state pursuant to a take-over offer at any time when any injunction or cease and desist order is in effect against the offeror based upon a violation of any provision of this act or the Oklahoma Securities Act.

Added by Laws 1985, c. 285, § 6, emerg. eff. July 22, 1985.

§71-457. Powers of Administrator - Rules and forms - Exemptions from act.

A. In administering the provisions of this act, the Administrator of the Department of Securities may exercise all powers granted to him under the Oklahoma Securities Act, which are not inconsistent with this act.

B. The Administrator may make and adopt such rules and forms as are necessary to carry out the purposes of this act, including, without limitation, rules defining terms used in this act.

C. The Administrator may by rule or order exempt from any provisions of this act any proposed take-over offer or any category or type of take-over offer which the Administrator determines does not have the purpose or effect of changing or influencing the control of a target company or where he determines that compliance with this act is not necessary for the protection of the offerees, and the Administrator may similarly exempt any persons from the requirement of filing statements under this act.

Added by Laws 1985, c. 285, § 7, emerg. eff. July 22, 1985.

§71-458. Registration fee.

The Administrator of the Department of Securities shall charge a filing fee of Five Hundred Dollars (\$500.00) for a registration statement filed by an offeror.

Added by Laws 1985, c. 285, § 8, emerg. eff. July 22, 1985.

§71-459. Violations - Cease and desist orders - Injunctions.

A. Whenever it appears to the Administrator of the Department of Securities that any person, including a controlling person of an offeror or target company, has engaged or is about to engage in any act or practice constituting a violation of this act or any rule or order hereunder:

1. He may issue and cause to be served upon any person violating any of the provisions of this act an order requiring the person guilty thereof to cease and desist therefrom; and

2. He may bring an action in the district court of Oklahoma County or the district court in any county where service can be obtained on one or more of the offenders to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder.

B. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order and may order rescission of any sales or purchases of securities determined to be unlawful under this act or any rule or order hereunder. The court shall not require the Administrator to post a bond.

Added by Laws 1985, c. 285, § 9, emerg. eff. July 22, 1985.

§71-460. Violations - Penalty - Evidence.

A. Any person who violates, and a controlling person of an offeror or target company who knowingly violates, any provision of this act or any rule thereunder, or any order of the Administrator of which this person has notice, shall be guilty of a felony and may be fined not more than Twenty-five Thousand Dollars (\$25,000.00) or imprisoned not more than five (5) years, or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. No indictment or information may be returned under this act more than two (2) years after the alleged violation.

B. The Administrator may refer such evidence as is available concerning violations of this act or of any rule or order hereunder to the Attorney General or the district attorney for the appropriate county who may, with or without any reference, institute the appropriate criminal proceedings under this act. If referred to a district attorney, he shall, within ninety (90) days, file with the Administrator a statement concerning any action taken or, if no action is taken, the reasons therefor.

C. Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

D. All shares acquired from an Oklahoma resident in violation of any provision of this act or any rule thereunder, or any order of the

Administrator of which the person has notice, shall be denied voting rights for one (1) year after acquisition, the shares shall be nontransferable on the books of the target company for one (1) year after acquisition and the target company shall, during this one-year period, have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption. Such a redemption shall occur on the date set in the call notice, but not later than sixty (60) days after the call notice is given.

Added by Laws 1985, c. 285, § 10, emerg. eff. July 22, 1985. Amended by Laws 1997, c. 133, § 580, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 420, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 580 from July 1, 1998, to July 1, 1999.

§71-461. Liability of offeror - Rights and remedies of seller.

A. Any offeror who purchases a security in connection with a take-over offer in violation of this act shall be liable to the person selling the security to him who may sue either at law or in equity. In an action for rescission the seller shall be entitled to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last-known address of the person liable. Damages are the excess of either the value of the security on the date of purchase or its present value, whichever is greater, over the present value of the consideration received for the security.

B. Every person who directly or indirectly controls a person liable under subsection A of this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, is also liable jointly and severally with and to the same extent as such person, unless the person who would otherwise be so liable proves that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

C. No action may be maintained under this section unless commenced before the expiration of three (3) years after the act or transaction constituting the violation or the expiration of one (1)

year after the discovery of the facts constituting the violation, whichever first expires.

D. The rights and remedies under this act are in addition to any other rights or remedies that may exist at law or in equity.
Added by Laws 1985, c. 285, § 11, emerg. eff. July 22, 1985.

§71-462. Application of provisions of Oklahoma Securities Act.

All of the provisions of the Oklahoma Securities Act which are not in conflict with the provisions of this act shall apply to any take-over offer involving a target company in this state.
Added by Laws 1985, c. 285, § 12, emerg. eff. July 22, 1985.

§71-501. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-502. Repealed by Laws 1989, c. 154, § 2, operative July 1, 1989.

§71-503. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

§71-504. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

§71-601. Citation.

This Code shall be known and may be cited as the "Oklahoma Subdivided Land Sales Code."
Added by Laws 1977, c. 95, § 601.

§71-602. Definitions.

In this Code, unless the context otherwise requires;

1. "Administrator" means the Administrator of the Department of Securities;

2. "Advertising" means:

- a. any circular, prospectus, public offering statement, information, advertisement or other material or communication by radio, television, pictures, newspapers, magazines or similar media used in connection with a disposition, an offer to dispose of, or any inducement to any person to purchase or acquire an interest in the title to any subdivided lands, including any leasehold interest or land contract,
- b. any material used to induce prospective purchasers to visit any subdivided lands or submit to a presentation by a subdivider or any of his representatives or agents, and
- c. the entire promotional plan for the disposition of subdivided lands, including promotional displays at

public or private events, parties, dinners or other meetings;

Advertising shall not mean stockholder communications including, but not limited to, annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses and application for listing securities on stock exchanges; communications addressed to and relating to the account of any persons who have previously executed a contract for the acquisition of any of the subdivider's lands except where directed to the disposition of additional lands; press releases or other communications delivered to newspapers or other periodicals for general information or public relations purposes, provided no charge is made by and nothing of value is given to such newspapers, their employees or other periodicals for the publication or use of any part of such communication;

3. "Agent" means any person who, directly or indirectly, disposes of, or offers to dispose of, or advertises for disposition any lot in a subdivision and includes a real estate salesman, broker or subdivider so engaged;

4. "Blanket encumbrance" means any trust deed, mortgage, judgment, lien or other financial encumbrance securing or evidencing debt and affecting lands to be subdivided or affecting more than one lot of subdivided land, and any agreement by which the subdivider holds more than one lot under an option, contract or deed, contract to purchase or trust agreement. Blanket encumbrance shall not mean a lien or other encumbrance arising as a result of the imposition of a tax assessed by a public authority so long as no portion thereof is past due;

5. "Commission" means the Oklahoma Securities Commission;

6. "Disposition" or "dispose of" means every sale, lease, assignment, award by lottery, option, or exchange of a lot and every contract for, or contract to do, any of the foregoing for value, or when given as an incident of any of the foregoing;

7. "License" means a subdivided land sales license as set forth in Article III of this Code;

8. "Lot" means any portion, parcel, piece, division, unit or undivided interest in land if such interest includes the right to the exclusive use of a specified portion of the land;

9. "Notice" means a communication from the Administrator. Notice to a subdivider shall be deemed complete when personally served upon him or mailed to him at the last-known address on file with the Administrator;

10. "Offer" means any inducement, solicitation or attempt to encourage a person to acquire an interest in a lot in a subdivision;

11. "Option" means, and is limited to, an offer to sell or purchase respecting which a consideration of not more than fifteen percent

(15%) of the total purchase price is exchanged to guarantee that the offer will not be withdrawn or revoked for an agreed period of time;

12. "Person" means an individual, corporation, partnership, association, joint stock company, or trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, government, political subdivision of a government or any other entity;

13. "Purchaser" means a person who acquires, attempts to acquire, is solicited to acquire or succeeds to any interest in a lot in a subdivision, excluding a security interest;

14. "Subdivision" and "subdivided land" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided for the purpose of disposition pursuant to a common promotional scheme or plan of advertising and disposition. If the land is designated or advertised as a common unit or by a common name, the land shall be presumed, without regard to the number of lots covered by each individual offering, to be offered for disposition as part of a common promotional plan. Where the context so requires, it shall also include any lot in a subdivision and any interest therein; and

15. "Subdivider" means a person whose interest in subdivided lands is advertised, offered or disposed of by himself or another person.

Added by Laws 1977, c. 95, § 602.

§71-621. Registration - Violations.

A. It is unlawful for any person to offer or dispose of any interest in subdivided land located in this state or to offer or dispose in this state of any subdivided land located without this state unless it is registered under this Code or the land or transaction is exempt under Sections 622 or 623 of this Code.

B. It is unlawful for any subdivider or registrant of subdivided lands registered under this Code, or any person in control of, controlled by, or under common control with the subdivider or registrant, or any agent, to offer or dispose of any of the registered subdivided land if the subdivider or registrant is in violation of this Code, or any rule promulgated under this Code, or any order issued under this Code of which he has notice, or if the registration statement relating to the subdivided lands, as of the date of such offer or disposition, is incomplete in any material respect or contains any statement which is false or misleading with respect to any material fact.

Added by Laws 1977, c. 95, § 621.

§71-622. Exemptions.

The following lands, lots, interests and evidences of indebtedness are exempt from Section 621 of this Code:

1. Subdivided land offered or disposed of by the United States, any state, political subdivision of the state or any agency or corporate or other instrumentality of one or more of the foregoing;
 2. Cemetery lots or interests;
 3. Subdivided lands in which there are fewer than twenty lots or parcels intended for sale or lease, whether immediate or future;
 4. Lots on which there is a residential, commercial or industrial building, or as to which there is a legal obligation on the part of the seller to construct such building within two (2) years of the date of disposition;
 5. Evidences of indebtedness secured by a real estate mortgage or deed of trust; and
 6. Such interests in subdivided lands as are regulated as securities under the Oklahoma Securities Act, as provided by this title, and the Administrator by rule or order exempts.
- Added by Laws 1977, c. 95, § 622.

§71-623. Additional exemptions.

The following transactions are exempt from Section 621 of this Code:

1. Offer or disposition of subdivided lands located within the State of Oklahoma;
2. Offer or disposition by a purchaser of subdivided lands for his own account in a single or isolated transaction;
3. Offer or disposition of subdivided lands if not more than ten lots are offered in any period of twelve (12) consecutive months;
4. Offer or disposition of lots to persons who are engaged in the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, the business of construction of buildings for resale;
5. Offer or disposition pursuant to an order of a court of competent jurisdiction;
6. Offer or disposition of lots, each of which will be sold for less than One Hundred Dollars (\$100.00), including closing costs, provided that the purchaser will not be required to purchase more than one lot;
7. Such leases of lots which the Administrator by rule or order exempts which are for periods not in excess of five (5) years, provided the terms of the lease do not obligate the lessee to renew;
8. Offer or disposition of subdivided lands if each lot within the subdivision exceeds ten (10) acres in size;
9. Sales of securities issued by a real estate investment trust; and
10. Any other transaction as to which the Administrator by rule or order finds that registration is not necessary or appropriate for the protection of purchasers.

Added by Laws 1977, c. 95, § 623.

§71-624. Burden of proof.

In any proceeding under this Code, the burden of proving an exemption or an exclusion from a definition is upon the person claiming it.

Added by Laws 1977, c. 95, § 624.

§71-625. Application for registration.

Application for registration of subdivided land shall be filed with the Administrator in such form as the Administrator may require. The application shall contain the following information and shall be accompanied by the following documents and exhibits, in addition to the information which may be required by the Administrator pursuant to subsection E of Section 627 of this title, the consent to service of process required by subsection A of Section 664 of this title, and the fees required by Section 652 of this title. To the extent that the information required below is included in filings submitted to and approved by the Federal Office of Interstate Land Sales Registration, or its successors, such filing will be accepted in lieu of a separate state filing:

1. The subdivider's name and address, form of business organization, date and jurisdiction of its organization and name and address of each of its offices and agents in this state;
2. The name, address and principal occupation for the past five (5) years of every director, officer or partner of the subdivider or other person occupying a similar position or performing similar functions, as well as for each owner of ten percent (10%) or more of the equity of the subdivider; the extent and nature of the interest of each of the foregoing persons in the subdivider and in the subdivided lands as of a date specified by the Administrator within thirty (30) days of filing of the application for registration;
3. If any person named in paragraph 2 of this section has been disciplined, debarred, censured or suspended by any governmental body or agency or convicted by any court for violation of a federal, state or local law or regulation in connection with activities relating to land sales, land investment, securities sales or registration, construction or sale of homes or home improvements or any other similar or related activity, a summary of the facts relating thereto;
4. If any person named in paragraph 2 of this section has, during the past thirteen (13) years, filed a petition in bankruptcy or has had an involuntary petition in bankruptcy filed against him or has been an officer, director or controlling person of a business entity which has become insolvent or has voluntarily or involuntarily filed in bankruptcy, a summary of the facts relating thereto;
5. The states or jurisdictions in which an application for registration or similar document have been filed, including a copy of

any filing with the United States Securities and Exchange Commission or Federal Office of Interstate Land Sales Registration or the successors of either, and a copy of any adverse order, judgment, order permitting withdrawal or decree of any court or regulatory authority in connection with the offering of subdivided lands;

6. A legal description of the subdivided lands and the recorded plat thereof, together with a map showing the division proposed to be made, the dimensions of the lots, and the relation of the subdivided lands to existing streets, roads and other off-site improvements, all verified by affidavit of an independent professional land surveyor and a topographical map;

7. A statement in a form acceptable to the Administrator of the condition of title to the land comprising the lots in this offering and any common areas or facilities related to or included in this offering, including a description of all encumbrances, easements, covenants, conditions, reservations, limitations or restrictions applicable thereto. This requirement may be met by submission of evidence of title in the form of a legal opinion, stating the condition of title, prepared and signed by an attorney at law who is experienced in the examination of titles, a member of the Bar Association of the state in which the property is located and who is not a salaried employee, partner, officer or director either of the subdivider or of any of its agents or affiliates; or by any other evidence of title acceptable to the Administrator;

8. Copies of the instruments by which the subdivider's interest in the subdivided land was acquired or, if required by the Administrator, proof of marketable title to the subdivided lands;

9. A statement and such additional assurance as the Administrator may require that the subdivider can convey or cause to be conveyed to the purchaser, upon compliance with the terms of the offer, the interest offered in the subdivided lands;

10. Copies of instruments which will be delivered to the purchaser to evidence his interest in the subdivided lands and copies of the contracts or other agreements which a purchaser will be required to agree to or sign in connection with the offer or disposition, together with the range of selling prices, rates or rentals at which it is proposed to dispose of the lots, and a list of fees the purchaser may be required to pay for membership in groups including, but not limited to, homeowners' associations, country clubs, golf courses and other community organizations associated with the subdivision, together with the description of any qualifications for or restrictions on membership in any of the foregoing;

11. A legal description of any lien or encumbrance affecting the subdivision or any portion thereof and a statement in a form acceptable to the Administrator of the efforts made or to be made to remove such lien or encumbrance and the consequences to the

purchasers of the success or failure of the efforts to remove such lien or encumbrance;

12. A summary of any easements or restrictions affecting any of the subdivided lands and copies of any instruments creating, altering or removing such easements or restrictions;

13. Evidence and a statement thereof, in a form satisfactory to the Administrator, indicating compliance with the zoning and other governmental laws, ordinances, and regulations affecting the use of the subdivided lands and adjacent properties, together with dates of the most recent zoning or jurisdictional changes, the nature thereof, any proposed changes now pending or known to be contemplated, and any existing or proposed taxes, special taxes, assessments or levies of a similar nature affecting any of the subdivided land;

14. Evidence and a statement thereof, in a form satisfactory to the Administrator, indicating compliance with the requirements of federal, state and local governments or agencies or instrumentalities thereof which have authority to regulate or issue permits or licenses which may have a material effect on the subdivider's plans with respect to the proposed subdivision, its facilities, common areas or improvements, specifically including environmental protection agencies and required environmental impact statements. If any permit, license or approval of any of the foregoing has been refused or conditioned, a summary of the reasons therefor and the effect on the proposed subdivision shall also be included;

15. A description of the land as it existed prior to any changes in connection with the proposed subdivision and any changes which have occurred or are contemplated in connection with the proposed subdivision;

16. A statement, in a form suitable to the Administrator, of the existing provisions for access to the subdivision, the availability of sewage disposal facilities and other public utilities including, but not limited to, water, electricity, gas and telephone facilities, the proximity in miles of the subdivision to nearby municipalities, the availability and scope of community fire and police protection, the location of primary and secondary schools, the improvements installed or to be installed, including off-site and on-site community and recreational facilities, the persons who are to install, maintain and pay for such improvements, and the estimated schedule for completion;

17. If required by the Administrator's rule or order, a performance or completion bond to assure that planned improvements will be completed, in a form suitable to the Administrator;

18. Such financial statements of the subdivider as the Administrator may require;

19. A narrative description of the promotional plan for the disposition of the subdivided lands, together with duplicate copies of all advertising material which has been prepared for public

distribution. The subject matter of advertising material which is pictorial in nature shall be limited to a depiction of the actual on-site conditions of the subdivided lands as of the date of the filing of the material. No advertising shall be used until a copy thereof has been allowed for use by the Administrator or a person authorized by the Administrator as provided in Section 653 of this title;

20. Three copies of the proposed public offering statement prepared in accordance with Section 626 of this title; and

21. Such additional information or exhibits as the Administrator may require.

Any of the items required under this section may be incorporated in the application for registration by reference provided that such item is contained in the public offering statement and the Administrator so allows.

Added by Laws 1977, c. 95, § 625. Amended by Laws 1989, c. 150, § 7, operative July 1, 1989.

§71-626. Public offering statements - Contents - Violations - Uses.

A. It shall be unlawful for a person to dispose of an interest in subdivided lands, pursuant to a registration under this Code, unless a current public offering statement is delivered to the purchaser at the expense of the subdivider or his agent at least forty-eight (48) hours prior to any sale, contract to sell or option to purchase and unless the purchaser is afforded a reasonable opportunity to examine and is permitted to retain the public offering statement. The subdivider shall obtain and retain a receipt, signed by the purchaser, acknowledging receipt of a copy of the public offering statement prior to the execution by the purchaser of any contract or agreement for the disposition of any lot in a subdivision, which receipt shall be kept in the files of the subdivider and be subject to inspection by the Administrator for a period of three (3) years from the date the receipt is taken.

B. A public offering statement shall disclose fully and accurately all material circumstances or features which affect the subdivided lands or which would be a material consideration in making the purchasing decision. The proposed public offering statement shall be submitted to the Administrator as required by paragraph 20 of Section 625 of this Code and shall be in such form and contain such information as the Administrator by rule requires, including:

1. The name, principal address and telephone number of the subdivider, his offices and agents in this state;

2. A general description of the subdivided lands including a statement of the total number of lots to be offered;

3. A statement as to whether the subdivider holds any option to purchase adjacent properties and, if so, a description of such option and the location and zoning of the adjacent properties;

4. The assistance, if any, that the subdivider, his agents or affiliates will provide to the purchaser in the resale of the property and the extent to which the subdivider, his agents or affiliates will be in competition in the event of resale;

5. The material terms of any encumbrances, easements, liens and restrictions including zoning and other regulations affecting the subdivided lands and each unit or lot, the efforts to remove such liens or encumbrances, the results of the success or failure thereof, and all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

6. The use for which the property is to be offered;

7. Information concerning existing or proposed improvements including, but not limited to, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal systems and customary utilities and the estimated cost, date of completion and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any lot in subdivided lands;

8. Such financial statements of the subdivider as the Administrator may require;

9. The topographic and climatic characteristics of the subdivided lands and adjacent area;

10. A statement of the existing provisions for access of the subdivision to community fire protection, the location of primary and secondary schools, the proximity to municipalities and the population thereof, the improvements installed or to be installed, including off-site and on-site community and recreational facilities, by whom they were or are to be installed, maintained or paid for, and an estimate of completion thereof; and

11. Such additional information as may be required by the Administrator including any of the information contained in the application for registration.

C. The public offering statement shall not be used for any promotional purpose before registration of the subdivided lands and afterwards it shall be used only in its entirety. It shall be unlawful for any person to advertise or represent that the Administrator has approved or recommended the subdivided lands or a disposition thereof. No portion of the public offering statement may be underscored, italicized or printed in larger or heavier or different colored type than the remainder of the statement unless required or approved by the Administrator.

D. The Administrator may require the subdivider or his agent to alter or amend the proposed public offering statement in order to provide full and fair disclosure to prospective purchasers.

Added by Laws 1977, c. 95, § 626.

§71-627. Orders - Application for registration - Filing of documents and information.

A. Within ninety (90) days from the date of filing a completed application for registration, the Administrator shall issue an order registering the subdivided lands or denying the application for registration. If an order of denial is not issued within ninety (90) days, the land shall be deemed registered unless the applicant has consented to a delay or the application has been withdrawn. If any amendment to the application for registration is filed prior to the time when the land shall be deemed registered, the application shall be deemed to have been filed when the amendment was filed.

B. An application for registration may be filed by the subdivider, any other person on whose behalf the sales are to be made, or a licensed subdivided land agent, but the Administrator may require that it be executed by the subdivider.

C. Any document filed under this Code within five (5) years preceding the filing of an application for registration may be incorporated by reference in the application for registration to the extent that the document is currently accurate.

D. The Administrator may by rule or otherwise permit the omission of any item of information or document from any application for registration.

E. The Administrator may, as a condition of registration and at the expense of the subdivider as specified in subsection A of Section 652 of this title, investigate any subdivision required to be registered under this Code for the purpose of verifying statements contained in the application for registration and for the protection of prospective purchasers. For the purposes of such investigation, the Administrator may:

1. Require that a report or opinion by an independent accountant, engineer, appraiser or other expert be prepared and filed;
2. Make an examination of the business and records of the applicant or subdivider;
3. Use and rely on any relevant information or data concerning a subdivision obtained by him from any federal, state or local government or agency thereof;
4. Conduct an on-site inspection of each subdivision;
5. Conduct an annual on-site reinspection of each subdivision for each of the three (3) years after the expiration date of the registration or any renewal thereof;
6. Make on-site examinations or designate a representative to make such examinations. Where additional technical, expert or special services are used, the actual cost of such services may be charged directly to and shall be paid by the person being examined; and

7. Where an on-site inspection of any subdivision has been made under this Code, an inspection of adjacent subdivided lands for which a subsequent application for registration is filed may be waived and an inspection thereof may be made at the time of the next succeeding on-site inspection.

F. The Administrator may require that any subdivided lands be sold by use of a specified form contract or agreement, and that a signed copy or conformed copy of such signed copy be filed with him or preserved by the subdivider for a period of up to five (5) years.

G. The Administrator may by rule or otherwise impose other conditions under which subdivided lands registered under this Code may be sold, provided such conditions are reasonable and in the public interest. The Administrator may require an escrow, trust or similar arrangement to reasonably assure that all improvements referred to in the application for registration will be completed and that purchasers will receive the interests in land for which they have contracted.

H. A registration is effective for one (1) year from its effective date, or for such longer period as the Administrator may permit by rule or order. No application for registration or effective registration may be withdrawn at any time after its filing unless permitted by rule or order of the Administrator. No registration is effective during the time a stop order is in effect under Section 628 of this title.

I. During the effective period of a registration, the Administrator may by rule or order require the person who filed the application for registration to file reports, not more often than quarterly, to keep reasonably current the information contained in the application for registration and to disclose the progress of the sales. If any of the lands registered have been sold in this state, the Administrator may by rule or order extend the period for filing the reports for an additional period not exceeding two (2) years from the date the registration became effective or the date of the registration period's latest extension.

J. The subdivider or registrant shall immediately report to the Administrator any material changes in the information contained in the application for registration.

K. Upon the expiration of an effective registration, the Administrator may renew the registration for an additional period of one (1) year, provided the registrant is in compliance with this Code, files such reports and applications as the Administrator may require, and pays an annual renewal fee as required by Section 652 of this title, which fee shall not exceed the original registration fee. Added by Laws 1977, c. 95, § 627. Amended by Laws 1989, c. 150, §8, operative July 1, 1989.

§71-628. Denial of effectiveness to, suspension or revocation of effectiveness of registration.

A. The Administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration if he finds that the order is in the public interest and that:

1. The registration statement as of its effective date or any report under subsections I or J of Section 627 of this Code is incomplete in any material respect or contains any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

2. Any provision of this Code or any rule, order or condition lawfully imposed under this Code has been willfully violated in connection with the offer or disposition of subdivided lands by the person filing the registration statement, by the subdivider, any partner, officer or director of the subdivider, by any person occupying a similar status or performing similar functions, by any person directly or indirectly controlling or controlled by the subdivider, or by any subdivided land sales agent or other person involved directly or indirectly in the offer or disposition of subdivided lands;

3. The subdivided lands are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offer or disposition of the subdivided lands. Provided, that the Administrator may not institute a proceeding against an effective registration statement under this paragraph more than one (1) year from the date of the order or injunction relied on, and he may not enter an order under this paragraph on the basis of an order or injunction entered under any other state or federal act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

4. The subdivider's enterprise or method of business includes or would include activities which are illegal where performed;

5. The offer or disposition of the subdivided lands is or would be unfair or inequitable to purchasers or has worked, tended to work or would work a fraud upon purchasers;

6. The disposition has been made or would be made with unreasonable commissions or other unreasonable compensation;

7. The applicant or registrant has failed to pay the proper filing fee. Provided, that the Commissioner may enter only a denial order under this paragraph and he shall vacate any such order when the deficiency has been corrected;

8. Advertising prohibited by Section 653 of this Code has been used in connection with the offer or disposition of the subdivided lands;

9. The financial condition of the subdivider or of any other person connected with the offer or disposition of subdivided lands adversely affects or would adversely affect the soundness of the land purchase; or

10. The subdivider is not in compliance with federal, state or local environmental quality standards.

B. The Administrator may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within sixty (60) days.

C. In a proceeding for registration, within sixty (60) days of the effective date of such registration statement, the applicant or registrant has the burden of satisfying the requirements of subsection A of this section.

D. The Administrator may issue a summary order denying, postponing, suspending or revoking the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify each person specified in subsection E of this section that the order has been entered, the reasons for the entry of order and that each such person has a right to request a hearing under subsection A of Section 661 of this Code. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator.

E. No stop order may be entered under this section except under subsection D of this section unless there has been appropriate prior notice to the applicant or registrant, to the subdivider and to the person on whose behalf the lands are to be or have been offered, an opportunity for hearings and the making of written findings of fact and conclusions of law.

F. The Administrator may vacate or modify a stop order if he finds that the conditions which prompted the stop order's entry have changed or that it is otherwise in the public interest to do so.
Added by Laws 1977, c. 95, § 628.

§71-631. Licenses - Exemptions - Term - Suspension, revocation or denial.

A. It is unlawful for any person to transact business in this state as an agent unless he has obtained a real estate broker's or real estate sales associate's license from his state of residence, if required, and has obtained a license under this Code to offer or dispose of subdivided lands, provided that the provisions of this section shall not apply to a person whose dealings relate solely to property exempt under Section 622 of this title or to transactions exempt under Section 623 of this title.

B. Every license expires on the thirtieth day of June following the date of issuance. It may be renewed under such rules as the Administrator may establish.

C. Any license may be suspended, revoked or denied as provided in Section 634 of this title.

D. The Administrator may, by rule or order, exempt from the requirements of this section persons as to whom he finds licensing under this Code is not necessary for the protection of purchasers. Added by Laws 1977, c. 95, § 631. Amended by Laws 1988, c. 108, § 25, eff. Nov. 1, 1988.

§71-632. Application for license.

A. An agent may obtain an initial or renewal license by filing with the Administrator an application together with the Consent to Service of Process required by subsection A of Section 664 of this title and the fee required by Section 652 of this title. The application shall contain whatever information the Administrator by rule requires concerning the applicant, including the applicant's finances, qualifications, experience, proposed method of doing business and disclosure of past activities.

B. Before final action on an application, the Administrator may designate a person to make an examination of the books, records and affairs of an applicant at the applicant's expense.

C. The Administrator may by rule prescribe standards of qualification with respect to training, experience and knowledge of the subdivided land sales business and provide for an examination which may be oral or written or both, to be taken by all applicants or any class thereof.

D. The Administrator may by rule or otherwise impose such other conditions in connection with the issuance of licenses under this Code as he deems appropriate in the public interest and for the protection of purchasers.

E. If no denial order is in effect and no proceeding is pending under Section 634 of this title, the license becomes effective thirty (30) days after a completed application is filed. The Administrator may by rule or order specify an earlier effective date. An application is deemed filed when all required information and amendments have been filed. The Administrator may cooperate with regulatory authorities in other states to simplify and coordinate license applications and renewal procedures.

Added by Laws 1977, c. 95, § 632. Amended by Laws 1989, c. 150, § 9, operative July 1, 1989.

§71-633. Records - Copies - Inspection - Reports - Examination - Rules and regulations.

A. Agents shall make and keep all accounts, correspondence, memoranda, papers, books and other records as the Administrator by

rule requires and shall keep them for at least six (6) years, and for the first three (3) years in a readily accessible location, unless the Administrator by rule prescribes otherwise. The Administrator may require that copies of any such records be provided by the agent to the subdivider for retention and inspection by the Administrator under such rules as he may prescribe. All required records shall be made available to the Administrator upon request for his inspection at his office or such other place as he may require. The Administrator may accept copies of records at his discretion.

B. Every agent shall file such reports as the Administrator by rule prescribes.

C. If the information contained in any application for a license or other document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the licensee shall file a corrective amendment within ten (10) days.

D. The Administrator may make periodic examinations, within or without this state, of the business and records of each licensed agent at such times and in such scope as he determines. The examinations may be made without prior notice. The Administrator shall charge all expenses incurred in such examination to the licensed agent whose business is being examined in the amount as provided in Section 652 of this title. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems practicable, may cooperate with other regulatory agencies. The Administrator may not be compelled to make public the information obtained in the course of the examinations except when his duty under this Code requires him to take action regarding an agent or to make information available to other regulatory agencies, or when the Administrator is called as a witness in any criminal proceeding.

E. The Administrator may prescribe rules for the conduct of business by agents as he finds appropriate in the public interest for the protection of purchasers.

Added by Laws 1977, c. 95, § 633. Amended by Laws 1989, c. 150, § 10, operative July 1, 1989.

§71-634. Denial, revocation or suspension of license.

A. The Administrator may by order deny effectiveness to, suspend or revoke any license or may censure the licensee if he finds that the order is in the public interest and that the applicant or licensee:

1. Has filed an application for a license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material facts;

2. Has violated or failed to comply with any provision of this article or any rule promulgated hereunder, or any order of which he has notice;

3. Has been convicted within the past ten (10) years of any crime involving a land sale or any aspect of the real estate business;

4. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate business;

5. Is the subject of an order entered within the past ten (10) years by a regulatory agency exercising jurisdiction similar to the Administrator's jurisdiction, which order denies, suspends or revokes a real estate broker's or subdivided land sales agent's license, or is the subject of a United States Post Office fraud order. The Administrator may not enter an order under this paragraph on the basis of an order under another state or federal law unless the order was based on facts which would currently constitute a ground for an order under this section;

6. Has engaged in dishonest or unethical practices in the real estate or subdivided land business or has taken unfair advantage of a purchaser;

7. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature;

8. Has failed to pay the proper filing fee, provided that the Administrator shall vacate any such order when the deficiency has been corrected;

9. Is disposing or has disposed of, or is offering or has offered for disposition in this state, subdivided land through any unlicensed agent with knowledge or reason to know that such agent had not or has not complied with this Code; or

10. Has made any material misrepresentation to, withheld or concealed any material fact from the Administrator or any of his representatives, or has failed to furnish information reasonably requested by the Administrator.

B. The Administrator may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when the license was issued unless the proceeding is instituted within sixty (60) days of the issuance of said license.

C. The Administrator may by order summarily deny, postpone the effectiveness of, or suspend a license pending final determination of any proceeding under this section. Upon the entry of the order the Administrator shall promptly notify the applicant or licensee, as well as the employer or prospective employer, if any, that the order has been entered, the reasons for the entry of order and the right of each such person to a hearing under subsection A of Section 661 of this Code. If no hearing is requested within thirty (30) days and

none is ordered by the Administrator, the order remains in effect until it is modified or vacated by the Administrator.

D. If the Administrator finds that any licensee or applicant is no longer in existence or has ceased to do business as an agent, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the Administrator may by order revoke the license or deny the application.

E. Withdrawal from the status of a licensed agent becomes effective thirty (30) days after receipt of an application to withdraw or such shorter period as the Administrator determines. Provided, that if a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal becomes effective, the Administrator may institute a revocation or suspension proceeding under subsection A of this section within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was in effect.

F. No order may be entered under this section except under subsection D of this section without appropriate prior notice to the applicant or licensee, opportunity for hearing and written findings of fact and conclusions of law. In cases of denial orders, such findings and conclusions shall be provided only if requested by the applicant.

Added by Laws 1977, c. 95, § 634.

§71-641. Fraud - Penalty.

It is unlawful for any subdivider, agent, or affiliate of either, in connection with the offer or disposition in this state of any subdivided land, directly or indirectly, to:

1. Employ any device, scheme or artifice to defraud;
2. Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
3. Engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

Added by Laws 1977, c. 95, § 641.

§71-642. Liens and encumbrances.

No agent may offer or dispose of lots within a subdivision required to be registered under this Code which is subject to a blanket encumbrance, option or contract for deed unless such offer or

disposition is in compliance with such rules as may be prescribed by the Administrator for the protection of purchasers.
Added by Laws 1977, c. 95, § 642.

§71-643. Contracts - Voiding - Rescinding - Revoking.

In connection with dispositions of subdivided lands required to be registered under this Code:

1. Any contract or agreement for the disposition is voidable at the discretion of the purchasers if the public offering statement has not been given to the purchasers as required by subsection A of Section 626 of this Code; and

2. A purchaser has an unconditional right to rescind any contract, agreement or other evidence of indebtedness, or to revoke any offer, until five (5) days after the date the purchaser actually receives a legible copy of the signed contract, agreement or other evidence of indebtedness or offer and the public offering statement. Until five (5) days after a purchaser actually receives all documents, a right to rescind may be exercised. Predating of a document does not defeat the time in which the right to rescind may be exercised.

Added by Laws 1977, c. 95, § 643.

§71-644. Notice to purchaser - Signatures - Rescission of contract.

In connection with the offer or disposition of subdivided land required to be registered under this Code:

1. Each contract, agreement or evidence of indebtedness shall prominently contain upon its face the following notice printed in at least sixteen-point bold type which shall be at least four (4) type points larger than the body of the document stating:

NOTICE TO PURCHASER

YOU ARE ENTITLED TO CANCEL THIS AGREEMENT AT ANY TIME IF YOU HAVE NOT RECEIVED THE PUBLIC OFFERING STATEMENT IN ADVANCE OF YOUR SIGNING THIS AGREEMENT. IN ADDITION, YOU ARE ENTITLED TO CANCEL THIS AGREEMENT FOR ANY REASON WITHIN FIVE (5) DAYS FROM THE DAY YOU ACTUALLY RECEIVE A LEGIBLE COPY OF THIS DOCUMENT. DO NOT SIGN A RECEIPT FOR THIS DOCUMENT UNLESS YOU HAVE ACTUALLY RECEIVED A LEGIBLE COPY OF IT.

The contract, agreement or evidence of indebtedness shall contain sufficient space upon its face in immediate conjunction with the above notice for the signature of each person obligated under such instrument. The signature shall acknowledge that such person has read the notice and received a legible copy of the document.

2. Exercise of the purchaser's right to rescission occurs when the purchaser gives written notice to the subdivider or agent at the address stated in the contract, agreement, or evidence of indebtedness. Notice of rescission if given by mail is effective when it is deposited in a mailbox properly addressed and postage

prepaid. A notice of rescission given by a purchaser need not take a particular form and is sufficient if it indicates by any form or written expression the intention of the purchaser not to be bound by the contract, agreement or evidence of indebtedness.

3. No act of the purchaser shall be effective to waive the right to rescind as provided in this Code.

Added by Laws 1977, c. 95, § 644.

§71-651. Administration of Code - Personal use of information - Privileges and immunities.

A. This Code shall be administered by the Administrator of the Department of Securities.

B. It is unlawful for the Administrator or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the Administrator and which is not generally available to the public. No provision of this Code, except subsection D of Section 633 of this Code, 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 the Administrator or any of his officers or employees.

Added by Laws 1977, c. 95, § 651.

§71-652. Fees - Disposition.

A. Unless otherwise provided by law, the following are the fees that shall be charged by the Administrator pursuant to the Oklahoma Subdivided Land Sales Code. No additional fees shall be assessed or charged pursuant to rule or regulation of the Administrator. Once paid, such fees shall be nonrefundable.

1. Agent License registration fee or renewal fee \$30.00
2. Agent License examination fee.....\$30.00
3. Filing fee for advertising or promotional materials \$10.00
4. Exemption notification filing fee.....\$250.00
5. Interpretive opinion or no-action request...\$250.00
6. Affidavit request.....\$10.00
7. Service of process upon the Administrator....\$10.00
8. Copying fee:
 - a. 8 1/2" by 14" or smaller.....\$.25 per page
 - b. Larger than 8 1/2" by 14".....\$1.00 per page
 - c. Certified copy 8 1/2" by 14" or smaller.....\$1.00 per page
 - d. Certified copy larger than 8 1/2" by 14"....\$2.00 per page
9. Document search fee for commercial purpose...\$20.00 per hour

- 10. Initial application for registration of subdivided land pursuant to Section 625 of this title:
 - a. Examination fee.....\$250.00
 - b. Registration fee.....\$1.00 per lot
- 11. Renewal application for registration of subdivided land pursuant to Section 627 of this title:
 - a. Examination fee.....\$250.00
 - b. Registration fee.....\$1.00 per lot not previously registered pursuant to the Initial Application or prior Renewal Application filed pursuant to this Code.

12. Charges for an on-site examination of a subdivision conducted pursuant to Section 627 of this title or of a licensed agent pursuant to Section 633 of this title, shall be billed to the person being examined at a rate of \$25.00 per hour per employee for the time spent by each Department employee in traveling to and from the examination site, conducting the examination, and preparing the examination report. In addition, the Department shall be reimbursed for all actual expenses incurred in conducting such examinations, including travel expenses, per diem, lodging, and other related expenses of Department employees conducting the examination, the cost of supplies, materials, photocopying, long distance telephone calls and postage; and costs of technical, expert or special services required in connection with such examination.

B. All fees and other charges collected by the Administrator pursuant to this section shall be deposited in the General Revenue Fund except for the following fees and charges which shall be deposited in the Oklahoma Securities Commission Revolving Fund established pursuant to Section 412 of this title:

- 1. The fees collected pursuant to paragraphs 5, 6, 7, 8 and 9 of subsection A of this section;
- 2. The fees collected pursuant to the provisions of Sections 627 and 633 of this title as provided in paragraph 12 of subsection A of this section;
- 3. The examination fees collected pursuant to subparagraph a of paragraph 10 and subparagraph a of paragraph 11 of subsection A of this section.

Added by Laws 1977, c. 95, § 652. Amended by Laws 1989, c. 150, § 11, operative July 1, 1989.

§71-653. Advertising.

A. It is unlawful for any person, in connection with the offer or disposition of subdivided land, to publish, circulate or use any advertising concerning the subdivided land which contains:

1. Any untrue statement, omission or pictorial representation of a material fact which under the circumstances makes the statement, omission or pictorial representation misleading; or

2. Any statement which differs materially from the information contained in a registration application or public offering statement.

B. All advertising except advertising relating to subdivided land or transactions exempt pursuant to Sections 622 and 623 shall be filed with the Administrator not later than ten (10) days prior to its use and shall not be used until a copy thereof has been approved for use by the Administrator, except advertising which the Administrator exempts by rule or order. Any advertising filed with the Administrator pursuant to this section shall be accompanied by the filing fee specified in Section 652 of this title.

Added by Laws 1977, c. 95, § 653. Amended by Laws 1989, c. 150, § 12, operative July 1, 1989.

§71-654. Fraud - Filing of documents and information.

It is unlawful for any person to make or cause to be made, in any document filed under this Code or in any proceeding under this Code, any false or misleading statement in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

Added by Laws 1977, c. 95, § 654.

§71-655. Presumptions - Fraud - Violations.

Neither the fact that a registration statement or an application for a license has been filed nor the fact that any subdivided lands are registered or that any person is licensed constitutes a finding by the Administrator that any document filed under this Code is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exclusion is available for an agent, subdivided land, or a transaction means that the Administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, subdivided land or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, any representation inconsistent with the foregoing.

Added by Laws 1977, c. 95, § 655.

§71-656. Power and duties of Administrator.

A. The Administrator may:

1. Make such public or private investigations within or without this state as he deems necessary to determine whether any person has

violated or is about to violate this Code or any rule or order issued hereunder, or to aid in the enforcement of this Code or in the prescribing of rules and forms hereunder;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Administrator determines, as to all of the facts and circumstances concerning the matter being investigated;

3. Publish information concerning any violation of this Code or any rule or order issued hereunder or concerning subdivided lands, or practices in the disposition thereof, which appear or tend to be unfair, inequitable or fraudulent; and

4. Hold hearings upon reasonable notice in respect of any matter arising out of the administration of this Code.

B. For the purpose of any investigation, hearing or proceeding under this Code, the Administrator or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the Administrator deems relevant or material to the inquiry.

C. In case of contumacy by or refusal to obey a subpoena issued to any person, the district court of Oklahoma County or the district court in any other county where service can be obtained on one or more of the defendants, upon application by the Administrator, may issue to the person an order requiring him to appear before the Administrator, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

D. No person is excused from attending and testifying or from producing any document or record before the Administrator, or in obedience to the subpoena of the Administrator or any officer designated by him, or in any proceeding instituted by the Administrator, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Added by Laws 1977, c. 95, § 656.

§71-657. Injunctions - Intervention in suits involving subdivided land.

A. Whenever it appears to the Administrator that any person has engaged or is about to engage in any act or practice constituting a violation of this Code or any rule or order hereunder, he may bring

an action in the name of the state in the district court of Oklahoma County or the district court in any other county where service can be obtained on one or more of the defendants to enjoin the acts or practices and to enforce compliance with this Code or any rule or order hereunder, or he may refer the matter to the Attorney General or the district attorney of the appropriate district. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order, or may appoint a receiver for the defendant or the defendant's assets or may order rescission of any sales or purchases of subdivided lands determined to be unlawful under this Code or any rule or order hereunder. The court may not require the Administrator to post a bond.

B. The Administrator may intervene in a suit involving subdivided land required to be registered under this Code. In any suit by or against a subdivider or agent involving subdivided lands required to be registered under this Code, the subdivider or agent shall promptly furnish the Administrator with notice of the suit and copies of all pleadings.

Added by Laws 1977, c. 95, § 657.

§71-658. Violation of Code - Fine.

A. Any person who willfully violates any provision of this Code except Section 654 of this title, or any rule under this Code, or any order of which the person has notice, or who violates Section 654 of this title, knowing or having reasonable cause to believe that the statement made was false or misleading in any material respect, shall be guilty of a felony and may be fined not more than Twenty-five Thousand Dollars (\$25,000.00) or imprisoned not more than three (3) years, or both.

B. The Administrator may refer such evidence as is available concerning violations of this Code or any rule or order hereunder to the Attorney General or the district attorney of the appropriate district, who may, with or without any reference, institute the appropriate criminal proceedings. The Attorney General or district attorney may designate and appoint one or more lawyers of the Department of Securities as special assistants as available for the purpose of assisting in or conducting all criminal prosecutions arising by reason of proceedings under this section.

C. Nothing in this Code limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

Added by Laws 1977, c. 95, § 658. Amended by Laws 1988, c. 108, § 26, eff. Nov. 1, 1988; Laws 1997, c. 133, § 581, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 421, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 581 from July 1, 1998, to July 1, 1999.

§71-659. Liability to purchaser - Persons liable - Limitation of actions.

Any person who:

1. Offers or disposes of subdivided land in violation of Sections 621, 631 or 653 of this Code, or any rule relating thereto, or any condition imposed under Sections 625 through 627 of this Code, or any order under this Code of which he has notice; or

2. Offers or disposes of subdivided land by means of any untrue statement of a material fact or any omission to state a material fact necessary to make the statement, in light of the circumstances under which it was made, not misleading, where the purchaser is unaware of the untruth or omission;

shall be liable to the person purchasing the subdivided land from him. Such purchaser may sue to recover the consideration paid for the subdivided land and any taxes, assessments, membership fees or consideration of a similar nature paid thereon or in connection therewith, together with reasonable attorney fees and interest at the rate of ten percent (10%) per year from the date of payment, less the amount of any income received on the land, upon the tender of the land, or for damages if he no longer owns the land. Damages are the amount that would be recoverable upon a tender less the value of the land when the purchaser disposed of it and interest at a legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the land for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last-known address of the person liable.

B. 1. Every person who directly or indirectly controls a subdivider who may be liable under this Code, every general partner, officer or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as any person liable under subsection A of this section, if he knew or in the exercise of reasonable care should have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

2. Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement if he knew or in the exercise of the reasonable care of a person in his occupation should have known of the existence of the facts by reason of which the liability is alleged to exist.

C. No action shall be maintained under this section unless commenced before the expiration of five (5) years after the act or transaction constituting the violation.

D. 1. No purchaser may commence an action under this section if, before suit is commenced, the purchaser has received a written offer stating the respect in which liability under this section may have arisen, thoroughly advising the purchaser of his rights, offering to repurchase the land or interest held by the purchaser for cash on the same basis as provided in subsection A of this section, payable on delivery of title to the land or other interest therein or, if the purchaser no longer owns the land, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with subsection A of this section, and stating that the offer may be accepted by the purchaser at any time within a specified period of not less than sixty (60) days after the date of receipt thereof or such shorter or longer period as the Administrator may by rule prescribe, and the purchaser has failed to accept such offering in writing within the specified period.

2. Offers shall be in the form and contain the information the Administrator by rule prescribes. Every offer under this subsection shall be delivered to the offeree or sent by certified mail addressed to him at his last-known address. Notwithstanding the provisions of this subsection, suit by the offeree for breach of the terms in the offer pursuant to this section shall be permitted.

E. Any condition, stipulation or provision binding any person acquiring any subdivided land to waive compliance with any provision of this Code or any rule or order hereunder is void.

F. The rights and remedies under this Code are in addition to any other rights or remedies that may exist at law or in equity.
Added by Laws 1977, c. 95, § 659.

§71-660. Summary prohibition of offers or dispositions.

If the Administrator has reason to believe that any offer or disposition of subdivided land required to be registered under this Code is or would be fraudulent to purchasers, he may by order summarily prohibit further offers or dispositions in this state of such land until it is registered under this Code. If the Administrator has reason to believe that any subdivided land is being offered or disposed of in this state by any unlicensed person in violation of this Code or any rule or order hereunder, he may by order summarily prohibit such person from further offers or dispositions in this state of such subdivided lands until he is licensed under this Code.

Added by Laws 1977, c. 95, § 660.

§71-661. Review of orders.

A. Any person aggrieved by final order of the Administrator may obtain a review by the Commission by filing with the Administrator within fifteen (15) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part and stating his ground therefor. The application and petition shall within sixty (60) days be heard de novo by the Commission en banc. The applicant may offer evidence and it shall be the duty of the Administrator to offer such evidence as is relied upon in the entry of his order and such further evidence as he may deem relevant. Upon the written request of the party on whose behalf the appeal is brought, or upon his own motion, the Administrator shall cause complete stenographic notes to be taken. If requested by the appealing party, the cost of taking and transcribing such notes shall be borne by the said appealing party. If such notes are taken upon the motion of the Administrator, the cost shall be borne by the Commission. The Commission or a majority thereof shall make such order as is deemed proper, just and equitable.

B. Any person aggrieved by a final order of the Commission may obtain a review of the order by the district court of Oklahoma County.

C. The commencement of proceedings under this section before the Commission shall not operate as a stay of the Administrator's order, unless so ordered by the Commission. The commencement of proceedings under this section before the district court shall not operate as a stay of the Commission's order, unless so ordered by the court.
Added by Laws 1977, c. 95, § 661.

§71-662. Rules, forms and orders - Making, amending or rescinding - Exemption from liability.

A. The Administrator may make, amend and rescind any rules, forms and orders that are necessary to carry out this Code, including rules and forms governing applications for registration or licensing, reports and defining any terms, whether or not used in this Code, insofar as the definitions are not inconsistent with this Code. For the purpose of rules and forms, the Administrator may classify subdivided lands, persons and matters within his jurisdiction, and prescribe different requirements for different classes.

B. No rule, form or order may be made, amended or rescinded unless the Administrator finds that the action is necessary or appropriate in the public interest and for the protection of purchasers. In prescribing rules and forms, the Administrator may cooperate with regulatory agencies of other units of government with a view to achieving maximum uniformity in the form and content of registration statements, applications and reports wherever practicable.

C. The Administrator may by rule or order prescribe the form and content of financial statements required under this Code, the

circumstances under which consolidated financial statements shall be filed and whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices unless otherwise permitted by rule or order.

D. No provision of this Code imposing any liability applies to any act done or omitted in good faith and conformity with any rule, form or order of the Administrator, notwithstanding that the rule, form or order may later be amended or rescinded or be determined to be invalid for any reason.

E. All rules and forms of the Administrator shall be published. Added by Laws 1977, c. 95, § 662.

§71-663. Filing of documents - Register - Inspection - Copies - Interpretative opinions.

A. A document is filed when it is received by the Administrator.

B. The Administrator shall keep a register of all licenses and registration statements which are or have ever been effective under this Code and all denial, suspension or revocation orders which have been entered under this Code. The register shall be open for public inspection.

C. The information contained in or filed with any application for registration, licensing or report shall be made available to the public in accordance with rules prescribed by the Administrator.

D. Subject to the provisions of subsection D of Section 633 of this Code, the Administrator upon request shall furnish to any person at a reasonable charge photostatic or other copies, certified under his seal of office, if certification is requested, of any entry in the register or any order on file in his office. Any copy so certified is admissible in evidence in trials and other proceedings.

E. The Administrator may honor requests from interested persons for interpretative opinions.

Added by Laws 1977, c. 95, § 663.

§71-664. Consent to service of process - Service.

A. Every applicant for a license or registration under this Code shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Code or any rule or order issued hereunder after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent need not be filed by a person who has filed a consent in connection with a previous registration or license which is then in effect. Service may be made by leaving a

copy of the process in the office of the Administrator, but is not effective unless the plaintiff, who may be the Administrator in the suit, action or proceeding instituted by him, promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the Administrator, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return of the process, or within such time as the court allows.

B. When any person, including any nonresident in this state, engages in conduct prohibited or made actionable by this Code or any rule or order hereunder, and he has not filed a consent to service of process under subsection A of this section and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the Administrator to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises out of that conduct and which is brought under this Code or any rule or order hereunder, with the same validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless the plaintiff, who may be the Administrator in a suit, action or proceeding instituted by him, promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last-known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process or within such time as the court allows.

C. When process is served under this section, the court or the Administrator in a proceeding before him, shall order such continuance as is necessary to afford the defendant or respondent reasonable opportunity to defend.

Added by Laws 1977, c. 95, § 664.

§71-665. Dispositions and offers - Application of law - Acceptance.

A. The provisions of this Code concerning dispositions and offers to dispose of subdivided land apply when a disposition or offer to dispose is made in this state or when an offer to purchase is made and accepted in this state. An offer to dispose includes solicitation of an offer to purchase. The provisions concerning purchases and offers to purchase apply when a purchase or offer to purchase is made in this state or an offer to dispose is made and accepted in this state.

B. For the purpose of this section, an offer to dispose or to purchase subdivided land is made in this state, whether or not either party is then present in this state, when the offer originates from

this state or is directed by the offeror to this state and received by the offeree in this state, but, for the purpose of Section 621 of this Code, an offer to dispose which is not directed to or received by the offeree in this state is not made in this state. An offer which is made to or accepted by a person who has been induced to travel from this state for the purpose of receiving the offer or making the acceptance shall be deemed to have been made or accepted in this state.

C. For the purpose of this section, an offer to purchase or dispose is accepted in this state when acceptance is communicated to the offeror in this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present, when the offeree directs the acceptance to the offeror in this state reasonably believing the offeror to be in this state and the acceptance is received by the offeror in this state.

D. An offer to dispose or to purchase subdivided land is not made in this state when the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or when a radio or television program originating outside this state is received in this state.
Added by Laws 1977, c. 95, § 665.

§71-666. Liens and encumbrances.

Notwithstanding any other provision of this Code, nothing contained herein shall apply to or invalidate the lien of a mortgagee who is not affiliated with the subdivider, when such lien attaches to land pledged as collateral in a transaction negotiated directly with the purchaser.

Added by Laws 1977, c. 95, § 666.

§71-667. Construction of act.

Article headings contained herein shall not be deemed to govern, limit or in any manner affect the scope, meaning or intent of the provisions of any article or section hereof.

Added by Laws 1977, c. 95, § 667.

§71-701. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-702. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-703. Repealed by Laws 2003, c. 347, § 53, eff. July 1, 2004.

§71-801. Short title.

Sections 801 through 829 of this title shall be known and may be cited as the "Oklahoma Business Opportunity Sales Act".

Added by Laws 1985, c. 157, § 1, eff. Nov. 1, 1985. Amended by Laws 1999, c. 109, § 10, eff. July 1, 1999.

§71-802. Definitions.

As used in the Oklahoma Business Opportunity Sales Act, Section 801 et seq. of this title, unless otherwise provided:

1. "Administrator" means the Administrator of the Oklahoma Department of Securities.

2. "Advertising" means any circular, prospectus, advertisement or other material or any communication by radio, television or other electronic transmission, newspapers, magazines, pictures or similar means used in connection with an offer or sale of any business opportunity.

3. a. "Business opportunity" means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, wherein it is agreed that the seller or a person recommended by the seller shall provide to the purchaser any products, equipment, supplies or services enabling the purchaser to start a business and the seller represents directly or indirectly, orally or in writing, that:

- (1) The seller or a person recommended by the seller will provide or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, on premises neither owned nor leased by the purchaser or seller;
- (2) The seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services;
- (3) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser;
- (4) The seller guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller;
- (5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business; or
- (6) The seller will provide a marketing plan.

b. "Business opportunity" does not include:

- (1) Any offer or sale of an on-going business operated by the seller and to be sold in its entirety;
- (2) Any offer or sale of a business opportunity to an on-going business where the seller will provide products, equipment, supplies or services which are substantially similar to the products, equipment, supplies or services sold by the purchaser in connection with the purchaser's on-going business;
- (3) Any offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of One Million Dollars (\$1,000,000.00) as determined on the basis of the seller's most recent audited financial statements prepared within thirteen (13) months of an offer or sale in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards. Net worth may be determined on a consolidated basis where the seller is at least eighty percent (80%) owned by one person and that person expressly guarantees the obligation of the seller with regard to the offer or sale of any business opportunity claimed to be excluded under this division; or
- (4) Any offer or sale of a business opportunity by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator or a judicial offer or sale of a business opportunity.

4. "Department" means the Oklahoma Department of Securities.

5. "Franchise" means a contract or agreement between a seller and a purchaser, express or implied, orally or in writing, where it is agreed that:

- a. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor; and
- b. The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate.

For the purposes of this paragraph, "franchisee" shall mean a person to whom a franchise is granted and "franchisor" shall mean a person who grants a franchise.

6. "Marketing plan" means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies or services and the advice or training includes, but is not limited to, preparing or providing:

- a. Promotional literature, brochures, pamphlets or advertising materials;
- b. Training regarding the promotion, operation or management of the business opportunity; or
- c. Operational, managerial, technical or financial guidelines or assistance.

7. "Offer" or "offer to sell" includes every attempt to dispose of a business opportunity for value or solicitation of an offer to purchase a business opportunity.

8. "On-going business" means an existing business that, for at least six (6) months prior to the offer, has been operated from a specific location, has been open for business to the general public and has substantially all of the equipment and supplies necessary for operating the business.

9. "Person" means an individual, corporation, trust, partnership, limited liability company, incorporated or unincorporated association or any other entity.

10. "Purchaser" means a person who enters into a contract or agreement for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

11. "Sale" or "sell" includes every contract or agreement of sale, contract to sell, disposition of a business opportunity or interest in a business opportunity for value.

12. "Seller" means a person who sells or offers to sell a business opportunity or any agent or person who directly or indirectly acts on behalf of such person.

Added by Laws 1985, c. 157, § 2, eff. Nov. 1, 1985. Amended by Laws 1992, c. 169, § 1, eff. Sept. 1, 1992; Laws 1997, c. 279, § 22, eff. July 1, 1997; Laws 1999, c. 109, § 11, eff. July 1, 1999.

§71-803. Exemptions.

The following business opportunities are exempt from Sections 806 through 811 of this title:

1. Any offer or sale of a business opportunity for which the immediate cash payment made by the purchaser for any business opportunity is at least Twenty-five Thousand Dollars (\$25,000.00) if the immediate cash payment does not exceed twenty percent (20%) of the purchaser's net worth as determined exclusive of principal residence, furnishings therein, and automobiles. The Administrator

may by rule withdraw or further condition the availability of this exemption.

2. Any offer or sale of a business opportunity for which the purchaser is required to make a payment to the seller or a person recommended by the seller not to exceed Five Hundred Dollars (\$500.00). For purposes of this paragraph, "payment" means the total amount the purchaser becomes obligated to pay to the seller or to any third party either prior to or at the time of delivery of the products, equipment, supplies or services or within one (1) year of the commencement of operation of the business opportunity by the purchaser. If payment is over a period of time, "payment" shall include the sum of the down payment and the total periodic payments. If the purchaser may enter at different levels, "payment" means the total sum the purchaser is obligated to pay to enter at the level chosen by the purchaser.

3. Any offer or sale of a business opportunity where the seller has a net worth of not less than One Million Dollars (\$1,000,000.00) as determined on the basis of the seller's most recent audited financial statements, prepared within thirteen (13) months of such offer or sale in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards. Net worth may be determined on a consolidated basis where the seller is at least eighty percent (80%) owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of any business opportunity claimed to be exempt under this paragraph. The Administrator may by rule withdraw or further condition the availability of this exemption.

4. Any offer or sale of a business opportunity where the purchaser has a net worth of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). Net worth shall be determined exclusive of principal residence, furnishings therein, and automobiles. The Administrator may by rule withdraw or further condition the availability of this exemption.

5. Any offer or sale of a business opportunity where the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, investment company as defined by the Investment Company Act of 1940, pension or profit sharing trust or other financial institution or institutional buyer or a dealer registered pursuant to the Oklahoma Securities Act, where the purchaser is acting for itself or in a fiduciary capacity.

6. Any offer or sale of a franchise as defined in Section 802 of this title provided that the seller delivers to each purchaser fourteen (14) calendar days prior to the earlier of the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

- a. A Uniform Franchise Offering Circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc., or
- b. A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. Section 436.

For the purposes of this paragraph, a personal meeting shall mean a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity. The Administrator may by rule adopt any amendment to the Uniform Franchise Offering Circular that has been adopted by the North American Securities Administrators Association, Inc. or any amendment to the disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. Section 436, that has been adopted by the Federal Trade Commission.

7. Any offer or sale of a business opportunity for which the required cash payment made by a purchaser to participate in any business opportunity does not exceed Seven Hundred Fifty Dollars (\$750.00) and the required payment is made for:

- a. the not-for-profit sale of sales demonstration equipment, material or samples, and/or
- b. product inventory sold to the purchaser at a bona fide wholesale price.

8. Any offer or sale of a business opportunity which the Administrator exempts by order or a class of business opportunities which the Administrator exempts by rule upon the finding that such exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

9. Any business which is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or the licensor on such premises, including, without limitation, leased departments, licensed departments and concessions.

Added by Laws 1985, c. 157, § 3, eff. Nov. 1, 1985. Amended by Laws 1991, c. 79, § 3, eff. Sept. 1, 1991; Laws 1992, c. 169, § 2, eff. Sept. 1, 1992; Laws 1997, c. 279, § 23, eff. July 1, 1997; Laws 2011, c. 327, § 1, eff. Nov. 1, 2011.

§71-804. Denial or revocation of exemption - Orders and violation thereof.

A. The Administrator may issue a final order denying or revoking any exemption specified in Section 803 of this title, not including

the exemption provided for in paragraphs 2 and 7 of Section 803 of the Oklahoma Business Opportunity Sales Act, with respect to a particular offering of one or more business opportunities if the Administrator finds that the order is in the public interest and that:

1. Any provision of the Oklahoma Business Opportunity Sales Act or any rule, order or condition lawfully imposed pursuant to the act has been willfully violated, in connection with the offer or sale of the business opportunity by the seller, any partner, officer or director of the seller, any persons occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller;

2. The business opportunity is the subject of an administrative order denying, suspending, or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction; but the Administrator:

- a. may not institute a proceeding pursuant to this paragraph more than one (1) year from the date of the order or injunction relied on, and
- b. may not enter an order pursuant to this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts, other than facts which establish jurisdiction, which would currently constitute a ground for an order under this section;

3. The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed;

4. The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would so operate; or

5. The seller's literature or advertising is misleading, incorrect, incomplete or deceptive.

Except as provided in subsection B of this section or unless the right to notice and hearing is waived by the person against whom the final order is to be issued, no order may be issued under this section without notice and opportunity for hearing as required by the Administrative Procedures Act. If the person to whom such notice is addressed does not request a hearing within fifteen (15) days after the service of such notice is effective, a final order shall be issued.

B. If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing an order pursuant to subsection A of this section, the Administrator may by order summarily deny or revoke any of the specified exemptions, not including the exemption provided for in paragraphs 2 and 7 of Section 803 of this title, pending final

determination of any proceeding under this section. Upon the entry of the summary order, the Administrator shall promptly notify the respondent or respondents:

1. That the summary order has been entered and the reasons therefor;

2. That the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after service of the notice is effective;

3. That within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated, or extended pending final determination of any proceeding under subsection A of this section; and

4. That a hearing shall be commenced within fifteen (15) days of the matter being set for hearing. The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or the Administrator's designee extends the summary order pending a final determination of any proceeding under subsection A of this section. If no hearing is requested and none is ordered by the Administrator, the summary order will remain in effect until it is modified or vacated by the Administrator or the Administrator's designee. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and an order shall not be issued pursuant to subsection A of this section except upon reasonable notice and opportunity for a hearing.

C. No order under this section may operate retroactively.

D. No person may be considered to have violated Section 806 of this title by reason of any offer or sale effected after the entry of an order under Section 804 of this title if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

Added by Laws 1985, c. 157, § 4, eff. Nov. 1, 1985. Amended by Laws 1997, c. 279, § 24, eff. July 1, 1997; Laws 1999, c. 109, § 12, eff. July 1, 1999.

§71-805. Burden of proving exemption.

In any administrative, civil or criminal proceeding related to the Oklahoma Business Opportunity Sales Act, the burden of proving an exemption, an exception from a definition or an exclusion is upon the person claiming it.

Added by Laws 1985, c. 157, § 5, eff. Nov. 1, 1985. Amended by Laws 1999, c. 109, § 13, eff. July 1, 1999.

§71-806. Certain sales unlawful.

It is unlawful for any person to offer or sell any business opportunity, as defined in Section 802 of this title, in this state unless the business opportunity is registered under the provisions of the Oklahoma Business Opportunity Sales Act or is exempt under Section 803 of this title.

Added by Laws 1985, c. 157, § 6, eff. Nov. 1, 1985. Amended by Laws 1999, c. 109, § 14, eff. July 1, 1999.

§71-807. Registration procedure.

A. In order to register a business opportunity, the seller shall file with the Administrator one of the following disclosure documents with the appropriate cover sheet as required by Section 808 of this title, a consent to service of process as specified in subsection B of this section, the appropriate fee set forth in Section 829 of this title, and any other information determined by the Administrator to be necessary:

1. A Uniform Franchise Offering Circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc. The Administrator may by rule adopt any amendment to the Uniform Franchise Offering Circular that has been adopted by the North American Securities Administrators Association, Inc.;

2. A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures; 16 C.F.R. Section 436. The Administrator may by rule adopt any amendment to the disclosure document prepared pursuant to 16 C.F.R. Section 436 that has been adopted by the Federal Trade Commission; or

3. A disclosure document prepared pursuant to Section 808 of this title.

B. Every seller shall file the consent to service of process required by Section 818 of this title.

C. A registration automatically becomes effective upon the expiration of fifteen (15) full business days after a complete filing, provided that no order has been issued or that no proceeding is pending pursuant to Section 810 of this title. The Administrator may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The Administrator may by order defer the effective date until the expiration of fifteen (15) full business days after the filing of any amendment. For purposes of this subsection, a filing shall be deemed complete upon receipt by the Administrator of the items described in subsections A and B of this section.

D. The registration is effective for one (1) year commencing on the day of effectiveness and may be renewed annually upon the filing of a current disclosure document accompanied by any documents or information that the Administrator may by rule or order require. A

renewal fee as set forth in Section 829 of this title shall accompany each request for renewal. Failure to renew upon the close of the one-year period of effectiveness will result in expiration of the registration. The Administrator may by rule or order require the filing of a sales report and payment of a report filing fee as set forth in Section 829 of this title.

E. The Administrator may by rule or order require the filing of all proposed literature or advertising prior to its use and payment of the review fee as set forth in Section 829 of this title for each sales literature or advertising package.

Added by Laws 1985, c. 157, § 7, eff. Nov. 1, 1985. Amended by Laws 1989, c. 150, § 13 operative July 1, 1989; Laws 1997, c. 279, § 25, eff. July 1, 1997; Laws 1999, c. 109, § 15, eff. July 1, 1999.

§71-808. Disclosure document.

A. It shall be unlawful for any person to offer or sell any business opportunity required to be registered pursuant to the Oklahoma Business Opportunity Sales Act unless a written disclosure document as filed pursuant to Section 807 of this title is delivered to each purchaser at least ten (10) business days prior to the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.

B. The disclosure document shall have a cover sheet which is entitled, in at least ten-point bold type, "DISCLOSURE REQUIRED BY THE STATE OF OKLAHOMA". Under the title shall appear the statement in at least ten-point type that "THE REGISTRATION OF THIS BUSINESS OPPORTUNITY DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE STATE OF OKLAHOMA. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THIS STATE. IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS INVESTMENT, SEEK PROFESSIONAL ADVICE BEFORE YOU SIGN A CONTRACT OR MAKE ANY PAYMENT. YOU ARE TO BE PROVIDED TEN (10) BUSINESS DAYS TO REVIEW THIS DOCUMENT BEFORE SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY PAYMENT TO THE SELLER OR THE SELLER'S REPRESENTATIVE". The seller's name and principal business address, along with the date of the disclosure document shall also be provided on the cover sheet. No other information shall appear on the cover sheet. The disclosure document shall contain the following information unless the seller uses a disclosure document as provided in Section 807 of this title:

1. The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this state;

2. The name of the seller; whether the seller is doing business as an individual, partnership, corporation, limited liability company, or any other form of business entity; the names under which

the seller has done, is doing or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or which will take responsibility for statements made by the seller;

3. The names, addresses and titles of the seller's officers, directors, trustees, general managers, principal executives, agents and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity;

4. Prior business experience of the seller relating to business opportunities including:

- a. the name, address and a description of any business opportunity previously offered by the seller,
- b. the length of time the seller has offered each such business opportunity, and
- c. the length of time the seller has conducted the business opportunity currently being offered to the purchaser;

5. With respect to persons identified in paragraph 3 of subsection B of this section:

- a. a description of the persons' business experience for the ten-year period preceding filing date of the disclosure document. The description of business experience shall list principal occupations and employers, and
- b. a listing of the persons' educational and professional backgrounds, including the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed;

6. Whether the seller or any person identified in paragraph 3 of subsection B of this section:

- a. has been convicted of any felony, has pleaded nolo contendere to a felony charge or has been the subject of any criminal, civil or administrative proceedings alleging: The violation of any business opportunity law, securities law, commodities law, franchise law, fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations; or
- b. has filed in bankruptcy, been adjudged bankrupt, been reorganized due to insolvency, or was an owner, principal officer or general partner of any other person that has so filed or was so adjudged or reorganized during or within seven (7) years of the date of the disclosure document;

7. The name(s) of the person(s) identified in paragraph 6 of subsection B of this section, nature of and parties to the action or proceeding, court or other forum, date of the institution of the action, docket reference to the action, current status of the action or proceeding, terms and conditions or any order or decree, the penalties or damages assessed and terms of settlement;

8. The initial payment required, or when the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller;

9. A detailed description of the actual services the seller agrees to perform for the purchaser;

10. A detailed description of any training the seller agrees to provide for the purchaser;

11. A detailed description of services the seller agrees to perform in connection with the placement of equipment, products or supplies at a location, as well as any agreement necessary in order to locate or operate equipment, products or supplies on a premises neither owned nor leased by the purchaser or seller;

12. A detailed description of any license(s) or permit(s) that will be necessary in order for the purchaser to engage in or operate the business opportunity;

13. Any representations made by the seller to the purchaser concerning sales or earnings that may be made from the business opportunity, including, but not limited to:

- a. the bases or assumptions for any actual, average, projected or forecasted sales, profits, income or earnings,
- b. the total number of purchasers who, within a period of three (3) years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies or services being offered to the purchaser, and
- c. the total number of purchasers who, within three (3) years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies or services being offered to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified;

14. A detailed description of the elements of a guarantee made by a seller to a purchaser. Such description shall include, but shall not be limited to, the duration, terms, scope, conditions and limitations of the guarantee;

15. A statement describing any contractual restrictions, prohibitions or limitations on the purchaser's conduct. The seller shall attach a copy of all business opportunity and other contracts or agreements proposed for use or in use in this state including,

without limitation, all lease agreements, option agreements and purchase agreements;

16. The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract or agreement;

17. A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract or agreement;

18. A copy of the most recent audited financial statements of the seller. If the seller's audited financial statements are dated more than four (4) months prior to the filing of the disclosure document, the seller shall submit unaudited financial statements for the interim period;

19. A list of the states in which the business opportunity is registered;

20. A list of the states in which the disclosure document is on file;

21. A list of the states which have denied, suspended or revoked the registration of the business opportunity;

22. A section entitled "Risk Factors" containing a series of short concise statements summarizing the principal factors which make the business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document; and

23. Any additional information as the Administrator may require by rule or order.

Added by Laws 1985, c. 157, § 8, eff. Nov. 1, 1985. Amended by Laws 1992, c. 169, § 3, eff. Sept. 1, 1992; Laws 1999, c. 109, § 16, eff. July 1, 1999.

§71-809. Contracts or agreements required - Contents.

A. It is unlawful for any person to offer or sell any business opportunity, as defined in Section 2 of the Oklahoma Business Opportunity Sales Act, unless the business opportunity contract or agreement is in writing and a copy of the contract or agreement is given to the purchaser at the time the purchaser signs the contract or agreement.

B. Contracts or agreements shall set forth in at least ten-point type the following:

1. The terms and conditions of any and all payments due to the seller;

2. The seller's principal business address and the name and address of the seller's agent in this state authorized to receive service of process;

3. The business form of the seller, whether corporate, partnership or otherwise;

4. The delivery date or, when the contract provides for a periodic delivery of items to the purchaser, the approximate delivery date of the product, equipment or supplies the seller is to deliver to the purchaser to enable the purchaser to start his or her business; and

5. Whether the product, equipment or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser.

Added by Laws 1985, c. 157, § 9, eff. Nov. 1, 1985.

§71-810. Suspension or revocation of registration - Grounds - Procedure.

A. The Administrator may issue a final order denying effectiveness to, or suspending or revoking effectiveness of, any registration if the Administrator finds that the order is in the public interest and that:

1. The registration as of its effective date or as of any earlier date in the case of any order denying effectiveness, or any amendment as of its effective date, or any report is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

2. Any provision of the Oklahoma Business Opportunity Sales Act or any rule, order or condition lawfully imposed pursuant to the act has been willfully violated, in connection with the business opportunity:

- a. by the person filing the registration, or
- b. by the seller, any partner, officer or director of the seller, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller, but only if the person filing the registration is directly or indirectly controlled by or acting for the seller;

3. The business opportunity registered or sought to be registered is the subject of an administrative order denying, suspending or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction; but the Administrator:

- a. may not institute a proceeding against an effective registration pursuant to this paragraph more than one (1) year from the date of the order or injunction relied on, and
- b. may not enter an order pursuant to this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts, other than facts which establish

jurisdiction, which would currently constitute a ground for an order under this section;

4. The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed;

5. The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would so operate;

6. There has been a failure to file any documents or information required by Section 807 of this title;

7. The seller has failed to pay the proper filing fee but the Administrator may enter only a denial order under this paragraph and the Administrator shall vacate any such order when the deficiency has been corrected; or

8. The seller's literature or advertising is misleading, incorrect, incomplete or deceptive.

Except as provided in subsection C of this section or unless the right to notice and hearing is waived by the person against whom the order is to be issued, no order may be issued under this section without notice and opportunity for hearing as required by the Administrative Procedures Act. If the person to whom such notice is addressed does not request a hearing within fifteen (15) days after the service of the notice is effective, an order as provided in this subsection shall be issued.

B. The Administrator may not institute a proceeding under this section against an effective registration on the basis of a fact or transaction known to the Administrator when the registration became effective unless the proceeding is instituted within thirty (30) days from the date the registration became effective.

C. 1. If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing an order pursuant to subsection A of this section, the Administrator may by order summarily postpone or suspend the effectiveness of the registration pending final determination of any proceeding under this section. Upon the entry of the summary order, the Administrator shall promptly notify the respondent or respondents:

- a. that the summary order has been entered and the reasons therefor,
- b. that the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after service of the notice is effective,
- c. that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending final

determination of any proceeding under subsection A of this section, and

- d. that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

2. The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or his or her designee extends the summary order pending final determination of any proceeding under subsection A of this section. If no hearing is requested and none is ordered by the Administrator, the summary order will remain in effect until it is modified or vacated by the Administrator or his or her designee. If a request for hearing on the summary order is timely made and if said hearing is not commenced by the Administrator within the time limit set forth herein, the summary order shall dissolve and a final order shall not be issued pursuant to subsection A of this section, except upon reasonable notice and opportunity for a hearing.

D. The Administrator may vacate or modify an order issued under this section if the Administrator finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Added by Laws 1985, c. 157, § 10, eff. Nov. 1, 1985. Amended by Laws 1992, c. 169, § 4, eff. Sept. 1, 1992; Laws 1997, c. 279, § 26, eff. July 1, 1997; Laws 1999, c. 109, § 17, eff. July 1, 1999.

§71-811. Minimum net worth requirement.

In connection with the offer or sale of a business opportunity, no seller may make or use any of the representations set forth in divisions (4) and (5) of subparagraph a of paragraph 3 of Section 2 of the Oklahoma Business Opportunity Sales Act unless the seller has at all times a minimum net worth of Fifty Thousand Dollars (\$50,000.00) as determined in accordance with generally accepted accounting principles.

Added by Laws 1985, c. 157, § 11, eff. Nov. 1, 1985.

§71-812. Administration of act - Use of disclosure of information.

A. The Oklahoma Business Opportunity Sales Act shall be administered by the Administrator.

B. It is unlawful for the Administrator or any of his or her officers or employees 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 Oklahoma Business Opportunity Sales Act authorizes the Administrator or any of the Administrator's officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under the act or in cooperation with other law enforcement agencies. No provision of the Oklahoma Business Opportunity Sales Act 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 the Administrator or any of the Administrator's officers or employees.
Added by Laws 1985, c. 157, § 12, eff. Nov. 1, 1985.

§71-813. Investigations and proceedings - Powers and duties of Administrator.

A. The Administrator:

1. May make such public or private investigations within or outside of this state as the Administrator deems necessary to determine whether any person has violated or is about to violate any provision of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, or to aid in the enforcement of the act or in the prescribing of rules and forms hereunder;
2. May require or permit any person to file a statement, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning the matter to be investigated; and
3. May publish information concerning any violation of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder.

B. For the purpose of any investigation or proceeding pursuant to the Oklahoma Business Opportunity Sales Act, the Administrator or the Administrator's designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the Administrator deems relevant or material to the inquiry.

C. In case of contumacy by, or refusal to obey a subpoena issued to any person, the district court of Oklahoma County or the district court in any other county where service can be obtained on one or more of the defendants, upon application by the Administrator, may issue to the person an order requiring him or her to appear before the Administrator, there to produce documentary evidence if so ordered or to give evidence touching upon the matters under investigation or in question. Failure to obey the order of the court may be punishable by the court as contempt.

D. No person is excused from attending and testifying or from producing any document or record before the Administrator or the Administrator's designee, or in obedience to the subpoena of the Administrator or the Administrator's designee, in any proceeding instituted by the Administrator, on the grounds that the testimony or evidence, documentary or otherwise, required by the Administrator may tend to incriminate him or her or subject him or her to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter or thing concerning which he or she is compelled, after claiming his or her privilege against self-incrimination, to testify or produce evidence,

documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Added by Laws 1985, c. 157, § 13, eff. Nov. 1, 1985. Amended by Laws 1999, c. 109, § 18, eff. July 1, 1999.

§71-814. Violation of act - Orders - Penalties.

A. Whenever it appears to the Administrator that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, the Administrator may:

1. Issue an order directing each person to cease and desist from continuing the act or practice and/or issue an order imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or transaction or of Fifty Thousand Dollars (\$50,000.00) for multiple violations or transactions in a single proceeding or a series of related proceedings; or

2. Prior to, concurrently with, or subsequent to an administrative proceeding pursuant to paragraph 1 of this subsection, bring an action in the district court of Oklahoma County or the district court in any other county where service can be obtained on one or more of the defendants to enjoin the acts or practices and to enforce compliance with the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets or the court may order rescission, which shall include restitution plus the legal interest rate, for any sales of business opportunities determined to be unlawful pursuant to the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. The court shall not require the Administrator to post a bond. No costs shall be assessed for or against the Administrator in a proceeding under the Oklahoma Business Opportunity Sales Act brought by or against the Administrator in any court except as otherwise provided by law.

B. Except as provided in subsection D of this section or unless the right to notice and hearing is waived by the person against whom the sanction is imposed, the sanctions provided in paragraph 1 of subsection A of this section may be imposed only after notice and opportunity for hearing as required by the Administrative Procedures Act. If the person to whom notice is addressed does not request a hearing within fifteen (15) days after the service of the notice, a final order as provided for in subsection A of this section may be issued.

C. For purposes of determining any sanction to be imposed under subsection A of this section, the Administrator shall consider, among other factors, the frequency and persistence of the conduct

constituting a violation of the Oklahoma Business Opportunity Sales Act or a rule or order of the Administrator under the Oklahoma Business Opportunity Sales Act, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

D. 1. If the Administrator makes written findings of fact to support the conclusion that the public interest will be harmed by delay in issuing a cease and desist order pursuant to paragraph 1 of subsection A of this section, the Administrator may issue a summary order pending the hearing required by subsection B of this section.

Upon the entry of the summary order, the Administrator shall promptly notify the person subject to the summary order:

- a. that the summary order has been entered and the reasons therefor,
- b. that the person subject to the summary order, if desiring a hearing, must make written request for a hearing to the Administrator within fifteen (15) days after service of the notice is effective,
- c. that within fifteen (15) days after receipt by the Administrator of a written request the matter will be set for hearing to determine whether the summary order should be modified, vacated or extended pending final determination of any proceeding under paragraph 1 of subsection A of this section, and
- d. that a hearing shall be commenced within fifteen (15) days of the matter being set for hearing.

2. The summary order shall remain in effect until the conclusion of the hearing on the summary order unless the Administrator or the Administrator's designee extends the summary order pending a final determination of any proceeding under paragraph 1 of subsection A of this section. If no hearing is requested and none is ordered by the Administrator, the summary order will remain in effect until it is modified or vacated by the Administrator or the Administrator's designee. If a request for hearing on the summary order is timely made and if the hearing is not commenced by the Administrator within the time limit set forth above, the summary order shall dissolve and a cease and desist order shall not be issued pursuant to paragraph 1 of subsection A of this section except upon reasonable notice and opportunity for a hearing as provided in subsection B of this section.

E. When the Administrator has authority to institute an action or proceeding pursuant to this section, the Administrator may accept an assurance of discontinuance of an act or practice that is alleged to be unlawful under Section 819 of this title from the person who is alleged to have engaged or be about to engage in the act or practice. The assurance shall not constitute an admission of guilt. The assurance may include a stipulation for any or all of the following:

1. The voluntary payment by the person for the costs of investigation;
2. An amount to be held in escrow pending the outcome of an action; or
3. An amount for restitution to an aggrieved person.

An assurance of discontinuance shall be in writing and filed with the Administrator. Unless rescinded by the parties or voided by a court for good cause, the assurance may be enforced in the district court of Oklahoma County by the parties to the assurance. The assurance may be modified by the parties or by a court for good cause.

Added by Laws 1985, c. 157, § 14, eff. Nov. 1, 1985. Amended by Laws 1991, c. 79, § 4, eff. Sept. 1, 1991; Laws 1992, c. 169, § 5, eff. Sept. 1, 1992; Laws 1997, c. 279, § 27, eff. July 1, 1997; Laws 1999, c. 109, § 19, eff. July 1, 1999.

§71-815. Review of orders.

A. Any person aggrieved by a final order of the Administrator may obtain a review by the Oklahoma Securities Commission by filing with the Oklahoma Securities Commission at the offices of the Department of Securities, within fifteen (15) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part and stating the ground therefor. The petition, the record upon which the final order was issued, and written briefs submitted by the appealing parties and the Administrator shall be reviewed by the Oklahoma Securities Commission. The cost of preparing the record of the administrative hearing shall be borne by the appealing parties. Oral argument by all parties shall be heard by the Oklahoma Securities Commission en banc unless waived by the party. Other than newly discovered evidence, additional evidence may only be presented by the appealing party and/or the Administrator on the request of the Oklahoma Securities Commission. Upon the written request of the party on whose behalf the appeal is brought, or upon his own motion, the Administrator shall cause complete stenographic notes to be taken of the proceeding before the Oklahoma Securities Commission. If requested by the appealing party, the cost of taking and transcribing such notes shall be borne by the said appealing party. If such notes are taken upon the motion of the Administrator, the cost shall be borne by the Department. The Oklahoma Securities Commission or a majority thereof shall make such order as is deemed proper, just and equitable within sixty (60) days of receipt by the Oklahoma Securities Commission of the written petition of the appealing party or at such later time as agreed to in writing by all parties.

B. Any person aggrieved by a final order of the Oklahoma Securities Commission may obtain a review of the order by the Supreme Court of Oklahoma. The proceedings for review shall be as now

prescribed by law and by rules of the reviewing court, subject to the power of the other court to make other and further rules with reference thereto.

C. The commencement of proceedings under this section before the Oklahoma Securities Commission shall not operate as a stay of the Administrator's order, unless so ordered by the Oklahoma Securities Commission. The commencement of proceedings under this section before the Supreme Court shall not operate as a stay of the Oklahoma Securities Commission's order, unless so ordered by the Court. Added by Laws 1985, c. 157, § 15, eff. Nov. 1, 1985. Amended by Laws 1991, c. 79, § 5, eff. Sept. 1, 1991; Laws 1992, c. 169, § 6, eff. Sept. 1, 1992; Laws 1997, c. 279, § 28, eff. July 1, 1997; Laws 1999, c. 109, § 20, eff. July 1, 1999.

§71-816. Rules, forms and orders - Making, amending and rescinding.

A. The Administrator may make, amend and rescind rules, forms and orders as are necessary to carry out the provisions of the Oklahoma Business Opportunity Sales Act including rules and forms governing disclosure documents, applications and reports, and defining any terms, whether or not used in the Oklahoma Business Opportunity Sales Act insofar as the definitions are not inconsistent with the provisions of the act. For the purpose of rules and forms, the Administrator may classify business opportunities, persons and matters within his or her jurisdiction, and prescribe different requirements for different classes.

B. No rule, form or order may be made, amended or rescinded unless the Administrator finds that the action is necessary or appropriate in the public interest or for the protection of the purchaser. In prescribing rules and forms the Administrator may cooperate with the administrators of other jurisdictions with a view to effectuating the policy of the Oklahoma Business Opportunity Sales Act to achieve maximum uniformity in the form and content of disclosure statements, applications, and reports whenever practicable.

C. No provision of the Oklahoma Business Opportunity Sales Act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the Administrator, notwithstanding that the rule, form or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Added by Laws 1985, c. 157, § 16, eff. Nov. 1, 1985.

§71-817. Document filed when received by Administrator - Register of applications and orders - Disclosure - Interpretive opinions.

A. A document is filed when it is received by the Administrator.

B. The Administrator shall keep a register of all applications for registration pursuant to the Oklahoma Business Opportunity Sales

Act and all orders which have been entered under the act. The register and all such orders may be maintained in computer form or any other form of data storage and shall be open for public inspection.

C. The information contained in or filed with or subsequent to any application for registration filed pursuant to this title, or any report filed with the Administrator may be made available to the public under such rules as the Administrator may prescribe. Litigation files and investigatory files and reports shall be kept confidential. If an investigatory file is created as a result of a complaint, grievance or inquiry, the complaint, grievance or inquiry shall be a part of such investigatory file and the existence of the complaint, grievance or inquiry and the matters and documents contained therein shall not be disclosed except pursuant to this title. A settlement agreement may, upon determination of the Administrator, remain part of the investigatory file and may be used against the person or entity involved only if the person or entity involved violates the terms of the settlement agreement. The Administrator may disclose any information obtained in connection with an investigation pursuant to this title for the purpose of a civil or administrative action brought by the Administrator, or a criminal referral. The Administrator may disclose such information to a law enforcement agency or another governmental or regulatory entity so long as the receiving entity represents in writing that under applicable law protections exist to preserve the integrity, confidentiality, and security of the information.

D. The Administrator in his or her discretion may honor written requests from interested persons for interpretive opinions or may issue determinations that the Administrator will not institute enforcement proceedings against certain specified persons for engaging in certain specified activities where the determination is consistent with the purposes fairly intended by the policy and provisions of this act upon the payment of a fee as set forth in Section 829 of this title.

Added by Laws 1985, c. 157, § 17, eff. Nov. 1, 1985. Amended by Laws 1989, c. 150, § 14, operative July 1, 1989; Laws 1992, c. 169, § 7, eff. Sept. 1, 1992; Laws 1997, c. 279, § 29, eff. July 1, 1997; Laws 1999, c. 109, § 21, eff. July 1, 1999.

§71-818. Application of act - Offer to sell, communication thereof and acceptance - Service of process and agent therefor.

A. The provisions of the Oklahoma Business Opportunity Sales Act concerning sales and offers to sell apply to persons who sell or offer to sell when:

1. An offer to sell is made in this state;
2. An offer to purchase is made and accepted in this state; or

3. The purchaser is domiciled in this state and the business opportunity is or will be operated in this state.

B. For the purpose of this section, an offer to sell is made in this state, whether or not either party is then present in this state, when:

1. The offer originates from this state; or

2. The offer is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

C. For the purpose of this section, an offer to sell is accepted in this state when acceptance:

1. Is communicated to the offeror in this state; and

2. Has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

D. An offer to sell is not made in this state when:

1. The publisher circulates or there is circulated on his or her behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months; or

2. A radio or television program originating outside this state is received in this state.

E. Every seller shall file with the Administrator, in such form as the Administrator may prescribe, an irrevocable consent appointing the Administrator or the Administrator's successor in office to be the seller's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator that arises under the Oklahoma Business Opportunity Sales Act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service on the Administrator may be made by leaving a copy of the process in the office of the Administrator, but is not effective unless:

1. The plaintiff, who may be the Administrator, in a suit, action, or proceeding instituted by the plaintiff, promptly sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at the defendant's or respondent's last address on file with the Administrator; and

2. The plaintiff's affidavit of compliance with this subsection is filed in the suit, action or proceeding on or before the return date of the process, if any, or within such further time as the court, or the Administrator in a proceeding before the Administrator, allows.

F. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, and the person has not filed a consent to service of process under subsection E of this section, that conduct shall be considered equivalent to the person's appointment of the Administrator or the Administrator's successor in office to be the person's agent to receive service of any lawful process in any noncriminal suit, action or proceeding against the person or the person's successor, executor or administrator which grows out of that conduct and that is brought pursuant to the Oklahoma Business Opportunity Sales Act or any rule or order hereunder with the same force and validity as if served on the person personally. Service on the Administrator may be made by leaving a copy of the process in the office of the Administrator, and it is not effective unless:

1. The plaintiff, who may be the Administrator in a suit, action or proceeding instituted by the Administrator, promptly sends notice of the service and a copy of the process by certified mail, return receipt requested and delivery restricted to the addressee, to the defendant or respondent at the defendant's or respondent's last-known address or takes other steps that are reasonably calculated to give actual notice; and

2. The plaintiff's affidavit of compliance with this subsection is filed in the suit, action, or proceeding on or before the return day of the process, if any, or within such further time as the court, or the Administrator in a proceeding before the Administrator, allows.

G. Service by mail shall be effective on the date of receipt by the defendant or respondent or, if refused, on the date of refusal by the defendant or respondent. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older shall constitute acceptance or refusal by the party addressed. Acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail.

H. Refusal by any person to accept delivery of the certified mail provided for in this section, or the refusal to sign the return receipt, or the lack of knowledge of the Administrator of any address to which process may have been mailed, shall not in any manner affect

the legality of the service, and the person shall be presumed to have had knowledge of the contents of the process.

I. Service as provided for in subsection E or F of this section may be used in a suit, action, or proceeding before the Administrator, or by the Administrator where the Administrator is the moving party. When process is served under this section, the court, or the Administrator in a proceeding before the Administrator, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

Added by Laws 1985, c. 157, § 18, eff. Nov. 1, 1985. Amended by Laws 1997, c. 279, § 30, eff. July 1, 1997; Laws 1999, c. 109, § 22, eff. July 1, 1999.

§71-819. Fraud or deceit unlawful.

It is unlawful for any person, in connection with the offer or sale of any business opportunity in this state, directly or indirectly:

1. To employ any device, scheme or artifice to defraud;
2. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
3. To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

Added by Laws 1985, c. 157, § 19, eff. Nov. 1, 1985.

§71-820. False or misleading statements unlawful.

It is unlawful for any person to make or cause to be made, in any document filed with the Administrator or in any proceeding pursuant to the Oklahoma Business Opportunity Sales Act any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

Added by Laws 1985, c. 157, § 20, eff. Nov. 1, 1985.

§71-821. Conclusiveness of filed document.

Neither the fact that an application for registration has been filed nor the fact that a business opportunity is effectively registered constitutes a finding by the Administrator that any document filed pursuant to the Oklahoma Business Opportunity Sales Act is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a business opportunity means that the Administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person or business opportunity. It is unlawful to make, or cause

to be made, to any purchaser or prospective purchaser any representation inconsistent with the provisions of this section. Added by Laws 1985, c. 157, § 21, eff. Nov. 1, 1985.

§71-822. Misleading advertising unlawful.

It is unlawful for any person, in connection with the offer or sale of any business opportunity in this state, to publish, circulate or use any advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

Added by Laws 1985, c. 157, § 22, eff. Nov. 1, 1985.

§71-823. Violations - Penalty - Criminal prosecutions.

A. Any person who willfully violates Section 806, subsection A of Section 808, subsection A of Section 809, Sections 811, 819, 821 or 822 of this title or who willfully violates any rule under the act or who willfully violates any order of which the person has notice, or who violates Section 820 of this title knowing that the statement made was false or misleading in any material respect, shall be guilty of a felony and may upon conviction be fined not more than Ten Thousand Dollars (\$10,000.00) or imprisoned not more than ten (10) years, or both, for each offense. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.

B. The Administrator may refer such evidence as may be available concerning violations of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder to the Attorney General of the State of Oklahoma or the district attorney for the county where a violation occurred, who may, with or without such a reference, institute the appropriate criminal proceedings under the act. The Attorney General or district attorney may designate and appoint one or more lawyers of the Department as special assistants available for the purpose of assisting in or conducting all criminal prosecutions arising by reason of proceedings under this section.

C. Nothing in the Oklahoma Business Opportunity Sales Act limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

Added by Laws 1985, c. 157, § 23, eff. Nov. 1, 1985. Amended by Laws 1991, c. 79, § 6, eff. Sept. 1, 1991; Laws 1997, c. 133, § 582, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 422, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 582 from July 1, 1998, to July 1, 1999.

§71-824. Violations - Civil actions.

A. Any person who violates Section 6, subsection A of Section 8, subsection A of Section 9 or Section 11 of the Oklahoma Business Opportunity Sales Act, is liable to the purchaser who may sue either at law or in equity for rescission, for recovery of all money and other valuable consideration paid for the business opportunity and for actual damages, together with interest at the legal rate from the date of sale, reasonable attorney's fees and court costs.

B. Any person who violates Sections 19, 21 or 22 of the Oklahoma Business Opportunity Sales Act is liable to the purchaser who may sue either at law or in equity for rescission, for recovery of all money or other valuable consideration paid for the business opportunity and for actual damages, together with interest at the legal rate from the date of sale, reasonable attorney's fees and court costs.

Added by Laws 1985, c. 157, § 24, eff. Nov. 1, 1985.

§71-825. Aiding and abetting violation.

Any person who controls or materially aids a person liable under Sections 22 or 23 of this act shall be liable jointly and severally with and to the same extent as the person committing the violation.

Added by Laws 1985, c. 157, § 25, eff. Nov. 1, 1985.

§71-826. Limitation of actions - Remedies not exclusive - Waiver of compliance, duty or liability void.

A. No action shall be maintained under subsection A of Section 24 of this act unless commenced before the expiration of three (3) years after the act or transaction constituting the sale. No action shall be maintained under subsection B of Section 24 of this act unless commenced before the expiration of two (2) years after the untruth or omission was, or in the exercise of reasonable care should have been, discovered, or such longer term of limitation as may be otherwise provided by law.

B. The rights and remedies under the Oklahoma Business Opportunity Sales Act are in addition to any other rights or remedies that may exist at law or in equity.

C. Any condition, stipulation or provision binding any purchaser of a business opportunity to waive compliance with or relieving a person from any duty or liability imposed by or any right provided by the Oklahoma Business Opportunity Sales Act or any rule or order issued pursuant to the act is void.

Added by Laws 1985, c. 157, § 26, eff. Nov. 1, 1985.

§71-827. Construction of act.

The Oklahoma Business Opportunity Sales Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Added by Laws 1985, c. 157, § 27, eff. Nov. 1, 1985.

§71-828. Oklahoma Securities Act - Application.

All of the administrative procedures applicable to investigations and proceedings conducted pursuant to the Oklahoma Securities Act which are not in conflict with the provisions of this act shall apply to any offer and/or sale of a business opportunity in this state. Added by Laws 1991, c. 79, § 7, eff. Sept. 1, 1991.

§71-829. Fees and charges - Deposits.

A. Unless otherwise provided for by law, the following shall be the fees charged pursuant to the provisions of the Oklahoma Business Opportunity Sales Act. Once paid, the fees shall be nonrefundable.

1. Registration filing fee \$250.00
2. Registration renewal fee \$150.00
3. Review of sales literature or advertising package \$ 50.00
4. Sales report filing fee \$ 50.00
5. Interpretive opinion or no-action request \$250.00
6. Request for order of exemption \$250.00

B. All fees and other charges collected by the Administrator shall be deposited in the General Revenue Fund, except for the fees deposited in the Oklahoma Department of Securities Revolving Fund. The fees deposited in the Oklahoma Department of Securities Revolving Fund shall be the fees set forth in paragraphs 3, 5, and 6 of subsection A of this section.

Added by Laws 1999, c. 109, § 23, eff. July 1, 1999.

§71-901. Short title.

This act shall be known and may be cited as the "Oklahoma Uniform TOD Security Registration Act".

Added by Laws 1994, c. 208, § 1, eff. Sept. 1, 1994.

§71-902. Definitions.

As used in the Oklahoma Uniform TOD Security Registration Act, unless the context otherwise requires:

1. "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner;
2. "Devisee" means any person designated in a will to receive a disposition of real or personal property;
3. "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent;
4. "Person" means an individual, a corporation, a limited liability company, an organization, or other legal entity;
5. "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons

who perform substantially the same function under the law governing their status;

6. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership;

7. "Register", including its derivatives, means:

- a. to issue a certificate showing the ownership of a certificated security,
- b. in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities, or
- c. in the case of a certificated or uncertificated security titled in the name of a registering entity or its nominee on behalf of one or more beneficial owners, to initiate or transfer an account showing beneficial ownership of securities;

8. "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker or a bank maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities;

9. "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account;

10. "Security account" means:

- a. a reinvestment account associated with a security, a securities account with a broker or a bank, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or
- b. a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death; and

11. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

Added by Laws 1994, c. 208, § 2, eff. Sept. 1, 1994. Amended by Laws 1994, c. 313, § 8, eff. Sept. 1, 1994.

§71-903. Rules governing registration in beneficiary form.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain

registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entirety, or as owners of community property held in survivorship form, and not as tenants in common. Added by Laws 1994, c. 208, § 3, eff. Sept. 1, 1994.

§71-904. Applicable law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

Added by Laws 1994, c. 208, § 4, eff. Sept. 1, 1994.

§71-905. Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

Added by Laws 1994, c. 208, § 5, eff. Sept. 1, 1994.

§71-906. Form of registration.

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

Added by Laws 1994, c. 208, § 6, eff. Sept. 1, 1994.

§71-907. Effect of registration.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary. The designation of a TOD beneficiary on a registration in beneficiary form shall be subject to the provisions of Section 178 of Title 15 of the Oklahoma Statutes.

Added by Laws 1994, c. 208, § 7, eff. Sept. 1, 1994.

§71-908. Ownership on death - Rights of creditors.

A. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes

to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common.

B. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners. A beneficiary fails to survive if the beneficiary is treated as having predeceased an owner by operation of Section 178 of Title 15 of the Oklahoma Statutes.

C. 1. A registration in beneficiary form is not effective against an estate of a deceased sole owner or a deceased last to die of multiple owners to transfer to a beneficiary or beneficiaries sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children, and dependent children, if other assets of the estate are insufficient. A TOD beneficiary in whose name a security is registered after the death of the owner is liable to account to the deceased owner's personal representative for securities so registered or their proceeds to the extent necessary to discharge such claims and charges remaining unpaid after the application of the assets of the decedent's estate. A proceeding to assert this liability may not be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor dependent child of the decedent, and a proceeding may not be commenced later than two (2) years following the death of the decedent. A beneficiary against whom the proceeding is brought may elect to transfer to the personal representative the security registered in the name of the beneficiary after the death of the deceased owner if the beneficiary still owns the security, or the net proceeds received by the beneficiary upon disposition of the security by the beneficiary, and that transfer fully discharges the beneficiary from all liability under this subsection. Amounts or securities recovered by the personal representative must be administered as part of the deceased owner's estate.

2. This subsection does not affect the right of a registering entity to register a security in the name of the beneficiary, or make a registering entity liable to the estate of a deceased owner, except for a reregistration after a registering entity has received written notice from any claimant to an interest in the security objecting to implementation of a registration in beneficiary form.
Added by Laws 1994, c. 208, § 8, eff. Sept. 1, 1994.

§71-909. Protections for registering entity.

A. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this act.

B. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the owner as provided in this act.

C. 1. A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 7 of this act and does so in good faith reliance on:

- a. the registration,
- b. this act, and
- c. information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity;

2. The protections of this act do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this act.

D. The protection provided by this act to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

Added by Laws 1994, c. 208, § 9, eff. Sept. 1, 1994.

§71-910. Nonprobate transfer - Liability of transferees.

A. In this section, "nonprobate transfer" means a transfer described in subsection B of this section by an owner whose last domicile was in this state.

B. A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this act and is not testamentary.

C. A transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against that estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received by that transferee.

D. Nonprobate transferees are liable for the insufficiency described in subsection C in the following order of priority:

1. A transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

2. The trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received;

3. Other nonprobate transferees, in proportion to the values received.

E. A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

F. Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

G. A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

H. A proceeding under this section must be commenced within one (1) year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within sixty (60) days after final allowance of the claim.

I. Unless a written notice asserting that a decedent's estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, a trustee receiving a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to that assets received by the beneficiary.

Added by Laws 1994, c. 208, § 10, eff. Sept. 1, 1994. Amended by Laws 1999, c. 141, § 5, eff. Nov. 1, 1999.

§71-911. Terms, conditions and form for registration.

A. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for registrations in beneficiary form, and for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for, but need not be limited to, the following:

1. Proving death;
2. Avoiding or resolving problems created by the divorce or death of a beneficiary in compliance with Section 178 of Title 15 of the Oklahoma Statutes;
3. Avoiding or resolving any problems concerning fractional shares;
4. Designating primary and contingent beneficiaries; and
5. Substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death.

B. Substitution may be indicated by appending to the name of the primary beneficiary the letters "LDPS", standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate.

C. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

D. The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

1. Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.
2. Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.
3. Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown or John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

Added by Laws 1994, c. 208, § 11, eff. Sept. 1, 1994.

§71-912. Construction.

A. The Oklahoma Uniform TOD Security Registration Act shall be liberally construed and applied to promote its underlying purposes

and policy and to make uniform the laws with respect to the subject of this act among states enacting it.

B. Unless displaced by the particular provisions of this act, the principles of law and equity supplement its provisions.

Added by Laws 1994, c. 208, § 12, eff. Sept. 1, 1994.

§71-913. Application.

The Oklahoma Uniform TOD Security Registration Act applies to registrations of securities in beneficiary form made before or after the effective date of this act by decedents dying on or after the effective date of this act.

Added by Laws 1994, c. 208, § 13, eff. Sept. 1, 1994.