

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 2637, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Daniels

Daniels-TEK-FS-Req#4144
5/13/2020 10:31 PM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 2637

By: Echols and Hill of the
House

6 and

7 Daniels of the Senate

8
9 FLOOR SUBSTITUTE

10 [securities - providing exempt treatment for certain
11 specified securities pursuant to rules adopted by the
12 United States Securities and Exchange Commission -
13 imposing limitation on sale of certain securities
14 within certain time period - effective date]

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

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

19 A. Notwithstanding any other provision of law, a security
20 issued and offered for sale by an issuer pursuant to Section
21 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Section
22 77c(a)(11)) shall maintain compliance with Rule 147A (17 C.F.R.
23 230.147A), the federal exemption for intrastate offerings adopted by
24 the U.S. Securities and Exchange Commission (SEC). Failure to

1 maintain compliance shall disqualify an issuer from offering
2 securities pursuant to this act.

3 B. The issuer must file a notice of the offering with the
4 Oklahoma Department of Securities, in writing or in electronic form,
5 together with a nonrefundable filing fee, in a form and format to be
6 determined by Department rule. The notice filing shall include a
7 notice of exemption and the disclosure statement required by Section
8 2 of this act. The Department may adopt rules establishing
9 procedures for the deposit of fees and the filing of documents by
10 electronic means. A notice is effective upon receipt by the
11 Department and payment of the filing fee. The notice may be
12 terminated by filing with the Department a notice of termination.
13 The notice and offering expire twelve (12) months after filing the
14 notice with the Department.

15 C. The issuer must amend the notice within thirty (30) days if,
16 at any time, any material information provided in the notice becomes
17 materially inaccurate.

18 D. The sum of all cash and other consideration received for the
19 sale of securities under this section shall be limited to Five
20 Million Dollars (\$5,000,000.00) within the twelve-month period
21 starting from the effective date of the notice filing. Subject to
22 the integration provisions of Rule 147A, such limit shall be in
23 addition to any other limit available to an issuer under any other
24 federal or Oklahoma exemption. This provision shall not be

1 interpreted to restrict an issuer from offering additional
2 securities intended to qualify under any other exemption under
3 federal or Oklahoma securities laws.

4 E. The aggregate value of securities sold by an issuer to a
5 purchaser in transactions exempt from registration under this
6 section in a twelve-month period shall not exceed Five Thousand
7 Dollars (\$5,000.00); provided, however, if the purchaser is an
8 accredited investor as defined by Rule 501 of Regulation D, adopted
9 by the SEC pursuant to the Securities Act, such purchaser shall not
10 be restricted in the amount of securities purchased. The issuer
11 must have a reasonable basis for believing that the purchaser of a
12 security qualifying for exemption under this section is an Oklahoma
13 resident and, if applicable, an accredited investor.

14 F. The issuer shall file with the Department and provide to
15 purchasers without cost an annual report of the results of the
16 operations and financial statements of the issuer within sixty (60)
17 days after the end of its fiscal year in a form and manner to be
18 prescribed by the Department until no securities under this offering
19 are outstanding.

20 G. A notice filing under this section shall be immediately
21 suspended by the Department if the payment of the filing fee is
22 dishonored by the financial institution upon which the funds are
23 drawn. The suspension shall remain in effect for fourteen (14)
24 calendar days. If the issuer does not remit the filing fee within

1 fourteen (14) calendar days beginning on the date of the suspension,
2 the Department shall enter a final order revoking the issuer's
3 notice filing.

4 H. A notice filing under this section shall be immediately
5 suspended by the Department if the issuer is determined to have made
6 any materially false statement in the issuer's notice filing. The
7 suspension shall remain in effect until the matter has been
8 investigated by the Department and either the suspension of the
9 notice filing has been removed or a final order is entered by the
10 Department revoking the notice filing. If an issuer is determined
11 to have made any materially false statement in the issuer's notice
12 filing, the Department shall bar the officers, directors and control
13 persons of the issuer from the use of the exemption in this section
14 for a period of five (5) years from the entry date of the final
15 order revoking the notice filing. For the purposes of this act,
16 "control persons" means any officer, director or other person having
17 the power, directly or indirectly, to direct the management or
18 policies of the entity, whether by contract or otherwise; and any
19 person holding twenty percent (20%) or greater of the outstanding
20 equity of the issuer.

21 I. Subject to the requirements of Rule 147A, the issuer may
22 make offers and sales of its securities using any form of general
23 solicitation or advertising, including making the offering available
24 through the issuer's website.

1 J. The issuer shall require evidence from each purchaser of
2 residency within this state before a sale may be made. Such
3 evidence shall include an affirmative representation made by the
4 purchaser that the purchaser is an Oklahoma resident at least
5 eighteen (18) years of age along with any one of the following:

- 6 1. Valid Oklahoma driver's license or official identification
7 card issued by the State of Oklahoma;
- 8 2. Current Oklahoma voter registration card; or
- 9 3. County property tax records showing the individual owns
10 and occupies property in this state as his or her primary residence.

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

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

19 The issuer must make available to prospective purchasers, along
20 with a copy to the Oklahoma Department of Securities at the time the
21 notice is filed, a disclosure statement containing material
22 information about the issuer and the offering including, but not
23 limited to:

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- 1 1. The name, legal status, physical address and Internet
2 website of the issuer;
- 3 2. The names of any and all control persons along with
4 descriptions of each person's background and qualifications;
- 5 3. A description of the business of the issuer and a history of
6 the issuer's organization and operations;
- 7 4. A description of the stated purpose and intended use of the
8 proceeds of the offering;
- 9 5. The target offering amount, the deadline to reach the target
10 offering amount, and any minimum amount required to close the
11 offering if such minimum is less than the target offering amount;
- 12 6. The price to the public of the securities along with the
13 method for determining the price;
- 14 7. A description of the ownership and capital structure of the
15 issuer including:
 - 16 a. the terms under which each then outstanding type and
17 class of security was offered,
 - 18 b. the rights granted to owners of each type and class of
19 security then outstanding, and
 - 20 c. how the rights of the securities being offered may be
21 affected by the rights of any other class of security
22 then outstanding of the issuer;
- 23 8. A description of the financial condition of the issuer to
24 include:

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

16 9. Any current or reasonably anticipated litigation or legal
17 proceedings in which the issuer is involved;

18 10. The issuer shall inform all purchasers and prospective
19 purchasers of the following:

- 20 a. there is no ready market for the sale of the
21 securities acquired from this offering; it may be
22 difficult or impossible for a purchaser to sell or
23 otherwise dispose of this investment. A purchaser may
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1 be required to hold and bear the financial risks of
2 this investment indefinitely,

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

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

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

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

19 A. An issuer of securities claiming exemption under this
20 section shall be a for-profit business residing in and doing
21 business within the State of Oklahoma.

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

1 business in Oklahoma if the officers, partners or managers of the
2 issuer that primarily direct, control and coordinate the activities
3 of the issuer are located within the State of Oklahoma.

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

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

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

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

20 4. A majority of the issuer's employees are based in this
21 state.

22 D. An issuer shall not be permitted to use this exemption if:

23 1. A company that has not yet defined its business operations,
24 has no business plan, has no stated investment goal for the funds

1 being raised, or that plans to engage in a merger or acquisition
2 with an unspecified business entity;

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

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

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

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

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

18 A. Notwithstanding the foregoing, an issuer shall be prohibited
19 from offering securities under this section if the issuer:

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

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

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

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

14 B. The Department may promulgate additional rules for
15 disqualification of an issuer for the purposes of this act.

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

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

4 A. All payments for purchases of securities offered under this
5 section shall be directed to and deposited into an escrow account
6 and all funds shall be used in accordance with the representations
7 made by the issuer to purchasers for such funds. Each security
8 offering shall have a dedicated escrow account. The payments must
9 be held in an escrow account until the aggregate capital raised from
10 all purchases is equal to or greater than the minimum target
11 offering amount specified in the disclosure statement as necessary
12 to implement the business plan. If the target offering amount is
13 not raised by the stated deadline in the disclosure statement, all
14 subscribed funds shall be returned to purchasers.

15 B. The escrow account must be held at a bank, depository or
16 other financial institution authorized to conduct escrow business in
17 this state and subject to regulation under the laws of the United
18 States or under the laws of this state.

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

22 The Oklahoma Department of Securities shall promulgate rules and
23 regulations authorized under this act within ninety (90) days of the
24 effective date of this act.

1 SECTION 7. This act shall become effective November 1, 2020.

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