ENROLLED SENATE
BILL NO. 909

By: Taylor and Haney of the Senate

and

Hamilton (James) and Steidley of the House

An Act relating to corporations, partnerships, and trademarks and labels; amending 18 O.S. 1991, Section 1142, as amended by Section 10, Chapter 273, O.S.L. 1993 (18 O.S. Supp. 1993, Section 1142), which relates to filing and other service fees; increasing certain fees; allowing payment for fees by certain methods; defining term; requiring Secretary of State to determine use of certain credit cards for payment of fees; allowing addition to fee of amount equal to service charge incurred for use of credit card; amending 28 O.S. 1991, Section 111, which relates to fees chargeable by the Secretary of State; amending fee and instituting additional fee; providing definition; amending 54 O.S. 1991, Sections 310.1 and 350, which relate to amendment to certificate of limited partnership and specified office and agent of limited partnerships; requiring payment of fee for filing a merger or consolidation of limited partnerships; requiring payment of fee acting as registered agent of limited partnership; amending 78 O.S. 1991, Sections 23, 25, 26 and 28, which relate to application for registration duration and renewal of registration, assignation of registration and cancellation of registration of trademarks; increasing fee for application for registration for renewal of registration, for recordation of assignment of registration and for cancellation of registration of trademarks; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 18 O.S. 1991, Section 1142, as amended by Section 10, Chapter 273, O.S.L. 1993 (18 O.S. Supp. 1993, Section 1142), is amended to read as follows:

FILING AND OTHER SERVICE FEES

Section 1142. A. The Secretary of State, for services performed in the office of the Secretary of State and for expense of mailing, shall charge and collect the following fees:

1. For any report, document, or other paper required to be filed in the Office of the Secretary of State, a fee of ~~Ten Dollars ($10.00) shall be paid~~ Twenty-five Dollars ($25.00);

2. For reservation of corporate name, a fee of ~~Five Dollars ($5.00) shall be paid~~ Ten Dollars ($10.00);

3. For issuing extra copies of any certificate not requiring any extra filing of papers or documents of any kind, a fee of Ten Dollars ($10.00) ~~shall be paid~~;

4. For issuing any other certificate, a fee of Ten Dollars ($10.00) ~~shall be paid~~;

5. For receiving a filing ~~and/or~~ or indexing the annual certificate of a foreign corporation doing business in this state, or both when filed together, a fee of Ten Dollars ($10.00) ~~shall be paid~~;

6. For preclearance of any document for filing, a fee of ~~Ten Dollars ($10.00) shall be paid~~ Fifty Dollars ($50.00);

7. For each service of process made upon and accepted by the Secretary of State, a fee of ~~Ten Dollars ($10.00) shall be paid~~ Twenty-five Dollars ($25.00);

8. For preparing and providing a written report of a record search, a fee of Five Dollars ($5.00) ~~shall be paid~~;

9. For filing and issuing certificates of incorporation, the fee shall be one-tenth of one percent (1/10 of 1%) of the authorized capital stock of such corporation; provided, that the minimum fee for any such service shall be Fifty Dollars ($50.00); provided further, that not for profit corporations shall only be required to pay a fee of Twenty-five Dollars ($25.00);

10. For filing and issuing amended certificates of incorporation or certificates of consolidation, if the resulting corporation is a domestic corporation, merger, if the surviving corporation is a domestic corporation, restatement, reorganization, revival, extension or dissolution, the fee shall be Fifty Dollars ($50.00); provided, however, not for profit corporations shall only be required to pay a fee of Twenty-five Dollars ($25.00). If an amendment shall provide for an increase in authorized capital in excess of Fifty Thousand Dollars ($50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase;

11. For issuing a certificate to a foreign corporation to do business in this state, and filing a certificate and statement of such corporation required pursuant to the provisions of Section 1130 of this title, the fee shall be one-tenth of one percent (1/10 of 1%) of the maximum amount of capital invested by such corporation in the state at any time during the fiscal year such certificate is issued to any such foreign corporation; provided, that the minimum fee for any such service shall be Three Hundred Dollars ($300.00); provided further, that no such corporation shall be required to pay a fee on an amount in excess of its authorized capital;

12. For amended certificate of qualification of a foreign corporation, or certificate of consolidation, if the resulting corporation is a foreign corporation, merger, if the surviving corporation is a foreign corporation, or withdrawal to a foreign corporation doing business in this state, a fee of Two Hundred Dollars ($200.00) ~~shall be paid~~; provided, however, for a certificate solely reflecting a change of mailing address, a fee of Ten Dollars ($10.00) ~~shall be paid~~;

13. Every foreign corporation on the anniversary of its qualification in this state each year, shall cause to be filed with the Secretary of State a certificate of its president, vice-president or other managing officers, in which shall be stated and shown the maximum amount of capital the corporation had invested in the state at any time subsequent to the issuance to it of a certificate to do business in this state and the amount of capital

previously paid upon. If the amount of capital so invested as shown by said certificate exceeds the amount formerly paid upon, the corporation, at the time of filing said certificate, shall pay to the Secretary of State an additional fee equal to one-tenth of one percent (1/10 of 1%) of the amount of such excess capital so invested by the corporation in the state; provided, that no such corporation shall be required to pay a filing fee on an amount in excess of its authorized capital, or to file the certificate provided for in this paragraph after it shall have paid a filing fee on its total authorized capitalization;

14. For acting as the registered agent, a fee of One Hundred Dollars ($100.00) ~~shall be paid~~ payable on the first day of July each year, and if not paid before the next ensuing September 1st, the Oklahoma Tax Commission shall suspend and forfeit the charter of the delinquent corporation pursuant to the procedures prescribed in Section 1212 of Title 68 of the Oklahoma Statutes. The Oklahoma Tax Commission shall collect and audit the registered agent fee authorized pursuant to this paragraph in conjunction with the collection and audit of franchise taxes as provided for in Sections 1201 through 1214 of Title 68 of the Oklahoma Statutes. All monies received by the Oklahoma Tax Commission pursuant to the provisions of this paragraph shall be paid to the State Treasurer for deposit in the General Revenue Fund; and

15. For ~~responding to telephone inquiries regarding any corporate record~~ any response by means of telecommunications to inquiries regarding information required to be maintained by the Secretary of State, ~~a fee of Three Dollars ($3.00) per telephone call shall be paid; provided that a maximum of three (3) inquiries regarding any such corporate record shall be answered per telephone call~~ a fee of Five Dollars ($5.00), unless otherwise provided. Fees collected pursuant to this paragraph shall be deposited in the Revolving Fund for the Office of the Secretary of State.

B. Except as otherwise provided by law, fees paid to the Secretary of State in accordance with the provisions of the Oklahoma General Corporation Act shall be properly accounted for and shall be paid monthly to the State Treasurer for deposit in the General Revenue Fund.

C. For any certificate supplied by the county clerk, such clerk shall receive a fee of One Dollar ($1.00). Such fees shall be properly accounted for and shall be paid into the county treasury in the same manner as other fees collected by the county clerk for the filing and recording of mortgages and deeds.

D. In any court proceeding pursuant to the provisions of the Oklahoma General Corporation Act requiring the filing of any decree, order, report or other document in the Office of the Secretary of State or in the office of any county clerk, in addition to the usual court costs and the costs for filing in the office of the clerk of the court, fees equal to the amounts provided for in this section for such required filing shall be collected as costs in such proceedings and such amount shall be forwarded to the Secretary of State and the county clerk with the papers to be filed.

E. The provisions contained in this section relating to the payment of incorporation fees by foreign corporations are not intended and shall not be construed to relieve such corporations, where applicable, of the payment of the annual corporate franchise tax to the Oklahoma Tax Commission.

F. For the purposes of computing the fees to be collected by the Secretary of State pursuant to the provisions of this section, each share without par value shall be treated the same as a share

with a par value of Fifty Dollars ($50.00), and the fees thereon shall be collected accordingly.

G. Payments for any required fees except as otherwise provided by law may be made as follows:

1. By the applicant's personal or company check, cash, or money order;

2. By a nationally recognized credit card issued to the applicant. The Secretary of State may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit which is accepted by over one thousand merchants in this state. The Secretary of State shall determine which nationally recognized credit cards will be accepted; provided, however, the Secretary of State must ensure that no loss of state revenue will occur by the use of such card.

SECTION 2. AMENDATORY 28 O.S. 1991, Section 111, is amended to read as follows:

Section 111. A. ~~The~~ In addition to other fees provided for by law, the Secretary of State shall collect the following fees:

1. For affixing the certificate of the Secretary and the seal of the State of Oklahoma, ~~Five Dollars ($5.00)~~ Ten Dollars ($10.00).

2. For recording any instrument required to be recorded in the Secretary's office, Three Dollars ($3.00) per page.

3. For copy of any paper or document to be paid for by the person demanding the same, One Dollar ($1.00) per page, provided the minimum charge shall not be less than Two Dollars ($2.00).

4. For filing an effective financing statement in the office of the Secretary of State pursuant to Section 9-307.6 of Title 12A of the Oklahoma Statutes, Ten Dollars ($10.00).

5. For filing a continuation statement, partial release, assignment of or amendment to an effective financing statement filed in the office of the Secretary of State pursuant to Section 9-307.6 of Title 12A of the Oklahoma Statutes, Ten Dollars ($10.00).

6. For filing a termination statement for an effective financing statement filed in the office of the Secretary of State pursuant to Section 9-307.6 of Title 12A of the Oklahoma Statutes, Ten Dollars ($10.00).

7. For registering a buyer of farm products, commission merchant or selling agent as provided for in Section 9-307.6 of Title 12A of the Oklahoma Statutes, Fifty Dollars ($50.00) per year.

8. For distributing a copy of the master list or portions thereof to buyers of farm products, commission merchants, and selling agents, as provided for in Section 9-307.6 of Title 12A of the Oklahoma Statutes, or for providing a copy of such master list or portions thereof to other interested parties, in accordance with the following fee schedule. Such fees may be paid annually or semi-annually:

a. For information requested for five (5) or less counties:

	Number of Farm Products	Photostatic Reproduction	Microfiche
(1)	1 to 5 products	$150 per year ...	$25 per year
(2)	6 to 10 products	$200 per year ...	$50 per year
(3)	11 to 20 products	$250 per year ...	$75 per year
(4)	over 20 products	$300 per year ..	$100 per year

b. For information requested for six (6) to twenty-five (25) counties:

	Number of Farm Products	Photostatic Reproduction	Microfiche
(1)	1 to 10 products	$200 per year ...	$50 per year
(2)	11 to 20 products	$250 per year ...	$75 per year
(3)	over 20 products	$300 per year ..	$100 per year

c. For information requested for twenty-six (26) to fifty (50) counties:

	Number of Farm Products	Photostatic Reproduction	Microfiche
(1)	1 to 10 products	$250 per year ...	$75 per year
(2)	11 to 20 products	$300 per year ...	$100 per year
(3)	over 20 products	$350 per year ...	$125 per year

d. For information requested for over fifty (50) counties:

	Number of Farm Products	Photostatic Reproduction	Microfiche
(1)	1 to 10 products	$300 per year ...	$100 per year
(2)	11 to 20 products	$350 per year ...	$125 per year
(3)	over 20 products	$400 per year ...	$150 per year

9. a. The Secretary of State is authorized to provide for the distribution of the master list or portions thereof to those persons specified in paragraph 8 of this subsection through electronic data or machine readable equipment or other communication media in such form and manner as is specified by the Secretary of State.

b. The Secretary of State is authorized to establish a fee system for such transfer of information pursuant to this paragraph. Such fee shall not exceed the amount necessary to cover the costs of the Secretary of State in providing such transfer of information.

c. In providing for the transfer of the information specified by this paragraph, the Secretary of State shall ensure the integrity of confidential information within the office of the Secretary of State through data security measures, internal controls and appropriate data base management.

10. For issuing a written confirmation of the existence or nonexistence of any effective financing statement on file in the office of the Secretary of State, Six Dollars ($6.00).

11. <u>The Secretary of State shall collect a fee of Twenty-five Dollars ($25.00) for every apostille, which is a special certificate which is attached to a public foreign document in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, issued.</u>

12. For each service rendered and not specified in this section, such fees as are allowed for similar services in other cases.

B. All of said fees shall be properly accounted for and shall be paid into the State Treasury monthly. The fees generated by paragraphs 1, 2, 3 and 11 of subsection A of this section shall be deposited to the credit of the Revolving Fund for the Office of the Secretary of State created pursuant to Section 276.1 of Title 62 of the Oklahoma Statutes. The fees generated by paragraphs 4 through 10 of subsection A of this section shall be deposited to the credit of the Central Filing System Revolving Fund created pursuant to Section 276.3 of this title.

SECTION 3. AMENDATORY 54 O.S. 1991, Section 310.1, is amended to read as follows:

Section 310.1 A. Pursuant to an agreement of merger or consolidation, a domestic limited partnership may merge or consolidate with or into one or more domestic limited partnerships or other business entities, formed or organized under the laws of this state, any other state, or the District of Columbia, with such domestic limited partnership or other business entity as the agreement shall provide being the surviving or resulting domestic limited partnership or other business entity. As used in this section, "other business entity" means a corporation, a business trust, a common law trust, or an unincorporated business including a partnership, whether general or limited, but excluding a domestic limited partnership.

B. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by each domestic limited partnership which is to merge or consolidate (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited partnership is merging or consolidating pursuant to this section, the domestic limited partnership or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation with the Secretary of State. The certificate of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the domestic limited partnerships or other business entities which is to merge or consolidate;

2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited partnerships or other business entities which is to merge or consolidate;

3. The name of the surviving or resulting domestic limited partnership or other business entity;

4. The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited

partnership or other business entity, and shall state the address thereof;

6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited partnership or other business entity, upon request and without cost, to any partner of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

7. If the surviving or resulting entity is not a domestic limited partnership or corporation organized pursuant to the laws of this state, a statement that such surviving or resulting other business entity agrees it may be served with process in this state in any action, suit or proceeding for the enforcement of any obligation of any domestic limited partnership which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding, and specifying the address to which a copy of such process shall be mailed to the entity by the Secretary of State.

D. Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation which was effective prior to September 1, 1990, shall not affect the validity or effectiveness of any such merger or consolidation.

E. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the Secretary of State of a certificate of merger or consolidation.

F. A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation.

G. When any merger or consolidation shall have become effective pursuant to this section for all purposes of the laws of this state, all of the rights, privileges and powers of each of the domestic limited partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited partnerships and other business entities, as well as all other things and causes of action belonging to each of such domestic limited partnerships and other business entities shall be vested in the surviving or resulting domestic limited partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited partnership or other business entity as they were of each of the domestic limited partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this state, in any of such domestic limited partnerships and other business entities shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of any said domestic limited partnerships and other business entities shall be preserved unimpaired. All debts, liabilities and duties of each of the domestic limited partnerships and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited partnership or other business entity, and may be enforced against the limited partnership or other entity to the same extent as if said debts, liabilities and duties had been incurred or contracted by the limited partnership or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited partnership, including a domestic limited

partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited partnership to wind up its affairs pursuant to Section 347 of Title 54 of the Oklahoma Statutes or pay its liabilities and distribute its assets pursuant to Section 348 of Title 54 of the Oklahoma Statutes.

H. At the time of filing a merger or consolidation, a fee in the amount of One Hundred Dollars ($100.00) shall be paid to the Secretary of State for deposit in the General Revenue Fund of the State Treasury.

SECTION 4. AMENDATORY 54 O.S. 1991, Section 350, is amended to read as follows:

Section 350. Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall:

1. Pay to the Secretary of State a registration fee in the amount of Three Hundred Dollars ($300.00);

2. Provide the Secretary of State with a certificate from the certifying officer of the jurisdiction of the foreign limited partnership's organization attesting to the foreign limited partnership's organization under the laws of such jurisdiction; and

3. Submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

a. the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state~~;~~,

b. the jurisdiction and date of its formation~~;~~,

c. the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation or a foreign corporation having a place of business in and authorized to do business in this state~~;~~,

d. a statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed pursuant to subparagraph c of this paragraph or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence~~;~~,

e. the address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited partnership~~;~~,

f. the name and business address of each general partner~~;~~, and

g. the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

For acting as the registered agent, a fee of One Hundred Dollars ($100.00) shall be paid on the first day of July of each year to the Office of the Secretary of State for deposit in the General Revenue Fund of the State Treasury.

SECTION 5. AMENDATORY 78 O.S. 1991, Section 23, is amended to read as follows:

Section 23. A. Subject to the limitations set forth in this title, any person who adopts and uses a trademark in this state may file in the Office of the Secretary of State, on a form to be furnished by the Secretary of State, an application for registration of that trademark setting forth, but not limited to, the following information:

1. The name and business address of the person applying for the registration~~;~~, and, if a corporation, the state of incorporation~~, and~~;

2. The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with the goods or services and the class in which the goods or services are categorized~~, and~~;

3. The date when the trademark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business~~,~~; and

4. A statement that the applicant is the owner of the trademark and that no other person has the right to use such trademark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

B. The application shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

C. The application shall be accompanied by a specimen or facsimile of such trademark.

D. The application for registration shall be accompanied by a filing fee of ~~Twenty-five Dollars ($25.00), which shall include the fee provided for in subsection B of Section 111 of Title 28 of the Oklahoma Statutes~~ Fifty Dollars ($50.00), payable to the Secretary of State.

SECTION 6. AMENDATORY 78 O.S. 1991, Section 25, is amended to read as follows:

Section 25. A. Registration of a trademark pursuant to the provisions of this title shall be effective for an initial term of ten (10) years from the date of registration and, upon application filed within six (6) months prior to the expiration of such term, on a form to be furnished by the Secretary of State, the registration may be renewed for successive periods of five (5) years. A renewal fee of ~~Fifteen Dollars ($15.00), which shall include the One Dollar ($1.00) fee provided for in Section 111 of Title 28 of the Oklahoma Statutes~~ Twenty-five Dollars ($25.00), payable to the Secretary of State, shall accompany the application for renewal of the registration.

B. A trademark registration may be renewed for successive periods of five (5) years in the same manner as the initial renewal.

SECTION 7. AMENDATORY 78 O.S. 1991, Section 26, is amended to read as follows:

Section 26. Any trademark and its registration shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. Assignment shall be by instruments in writing duly executed and may be recorded with the Secretary of State upon the payment of a fee of ~~Fifteen Dollars ($15.00), which shall include the One Dollar ($1.00) provided for in Section 111 of Title 28 of the Oklahoma Statutes~~ Twenty-five Dollars ($25.00), payable to the Secretary of State who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any

registration pursuant to the provisions of this title shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the Secretary of State within three (3) months after the date of the assignment or prior to such subsequent purchase.

SECTION 8. AMENDATORY 78 O.S. 1991, Section 28, is amended to read as follows:

Section 28. A. The Secretary of State shall cancel from the register:

~~(1)~~ 1. After one (1) year from the effective date of this act, all registrations under prior acts which are more than ten (10) years old and not renewed in accordance with this act;

~~(2)~~ 2. Any registration concerning which the Secretary of State shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

~~(3)~~ 3. All registrations granted under this act and not renewed in accordance with the provisions hereof;

~~(4)~~ 4. Any registration concerning which a court of competent jurisdiction shall find:

~~(a)~~ a. that the registered trademark has been abandoned,

~~(b)~~ b. that the registrant is not the owner of the trademark,

~~(c)~~ c. that the registration was granted improperly,

~~(d)~~ d. that the registration was obtained fraudulently~~,~~;

~~(5)~~ 5. When a court of competent jurisdiction shall order cancellation of a registration on any ground.

B. At the time of filing a cancellation, a fee in the amount of Twenty-five Dollars ($25.00) shall be paid to the Secretary of State.

SECTION 9. Sections 1 through 3, and 5 through 8 of this act shall become effective July 1, 1994.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 18th day of May, 1994.

President of the Senate

Passed the House of Representatives the 20th day of May, 1994.

Speaker of the House of Representatives