

ENROLLED HOUSE
BILL NO. 2893

By: Settle and Sullivan
(Leonard) of the House

and

Fisher, Gustafson,
Henry, Rubottom and
Snyder of the Senate

An Act relating to limited liability partnerships; enacting the Oklahoma Limited Liability Partnership Act; prescribing procedure for registration of limited liability partnerships; prescribing content of registration statement; providing for effect of registration; imposing execution requirement; imposing certain duty upon Secretary of State; requiring payment of certain annual fee; requiring notice of certain changes; prescribing effective date of registration; providing for continued effect of registration; insulating certain persons from liability based upon errors or changes; providing for continued existence of certain entity registered pursuant to act; prescribing procedures for successor entities; providing for effect of filing; exempting certain entities from requirements related to fictitious names; prescribing requirements for names of limited liability partnerships; providing procedures for correction statements; authorizing fee; authorizing fee for registered agent; authorizing revocation of registration; prescribing procedure for revocation; providing certain persons not liable for certain debts, obligations or liabilities; providing exception; requiring legal responsibility for certain acts or conduct; providing for exclusion for certain persons from certain proceedings; requiring security of limited liability partnerships; prescribing requirements for certain policies of insurance; authorizing certain security in lieu of insurance; prescribing requirements related to security; prescribing liability for certain failure related to security; prescribing treatment of security related to bankruptcy proceedings; authorizing actions by limited liability partnerships; stating legislative intent with respect to recognition of powers of entity outside certain jurisdiction; stating legislative intent with respect to applicability of certain law; prescribing procedure for registration of foreign limited liability partnerships; imposing certain fee; imposing certain duties upon Secretary of State with respect to registration of foreign limited liability partnerships; imposing certain requirements with respect to name under which entities registered; prescribing procedure for

modifications to information contained in registration; prescribing procedure for withdrawal of foreign limited liability partnerships; imposing certain fee; requiring registration prior to transaction of business by foreign limited liability partnerships; providing for appointment of certain service agent; providing certain persons not liable for debts or obligations under certain circumstances; providing certain activities of foreign limited liability partnerships not considered transaction of business; authorizing certain actions by Attorney General; providing for applicability of certain law; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 401 of Title 54, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 17 of this act shall be known and may be cited as the "Oklahoma Limited Liability Partnership Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. A partnership shall become a registered limited liability partnership by filing with the Secretary of State a registration stating:

1. The name of the partnership and, if applicable, the name under which the limited liability partnership will conduct business, if different than the legal name of the partnership;

2. The address of its principal office;

3. The name and street address of a registered agent in this state which agent shall be an individual resident of this state, a domestic corporation, limited liability company, limited partnership or limited liability partnership; or a foreign corporation, limited liability company, limited partnership or limited liability partnership having a place of business and authorized to do business in this state, which the partnership shall be required to maintain;

4. A brief statement of the business in which the partnership engages;

5. Any other matters that the partnership determines to include; and

6. That the partnership thereby registers as a registered limited liability partnership.

B. A registered limited liability partnership means a partnership formed pursuant to an agreement governed by the laws of this state and registered under subsection A of this section. A registered limited liability partnership is a partnership under Section 206 of Title 54 of the Oklahoma Statutes for all purposes of the laws of this state. A foreign limited liability partnership includes a limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction and registered under the laws of such jurisdiction.

C. The registration shall be executed by one or more partners.

D. The registration shall be accompanied by a fee of One Hundred Dollars (\$100.00) which shall be apportioned to the General Revenue Fund of the State Treasury.

E. The Secretary of State shall register as a registered limited liability partnership, any partnership that submits a registration with the required fee.

F. A partnership registered under this section shall pay on the anniversary date of its registration in Oklahoma in each year following the year in which its registration is filed, an annual fee of One Hundred Dollars (\$100.00) which shall be apportioned to the General Revenue Fund of the State Treasury. The fee shall be accompanied by a notice of any material changes in the information contained in the partnership's registration and executed by one or more partners. Registration is effective immediately after the date a registration is filed, and remains effective until (1) it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners authorized to execute a withdrawal notice and paying a filing fee of Fifty Dollars (\$50.00) which shall be apportioned to the General Revenue Fund of the State Treasury or (2) thirty (30) days after receipt by the partnership of a notice from the Secretary of State (which notice shall be sent to the last-known principal office address on the records of the Secretary of State by certified mail, return receipt requested) that the partnership has failed to make timely payment of the annual fee specified in this subsection unless the fee is paid within such thirty-day period.

G. A partnership becomes a registered limited liability partnership at the date of filing if there has been substantial compliance with the requirements of this act. A partnership continues as a registered limited liability partnership if there has been substantial compliance with the requirements of this act. The status of a partnership as a registered limited liability partnership and the liability of partners shall not be adversely affected by errors or subsequent changes in the information stated in a registration or annual notice.

H. A partnership that registers as a registered limited liability partnership shall not be deemed to have dissolved as a result thereof and is for all purposes the same partnership that existed before the registration and continues to be a partnership under the laws of this state. If a registered limited liability partnership dissolves, a partnership which is a successor to such registered limited liability partnership and which intends to be a registered limited liability partnership shall not be required to file a new registration and shall be deemed to have filed any documents required or permitted under this act which were filed by the predecessor partnership.

I. The fact that a registration or annual notice is on file in the Office of the Secretary of State is notice that the partnership is a registered limited liability partnership and is notice of all other facts set forth in the registration or annual notice.

J. Any registered limited liability partnership under this act shall be exempt from the filing requirements of Sections 81 through 86 of Title 54 of the Oklahoma Statutes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 403 of Title 54, unless there is created a duplication in numbering, reads as follows:

The name of a registered limited liability partnership shall contain the words "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name. If the name of the registered limited liability partnership

conflicts with another name filed with the Secretary of State, the registered limited liability partnership may register under the conflicting name if the partnership seeking registration files a consent to similar name signed by the other party who agrees to change its name to eliminate the conflict or to withdraw from the state or dissolve its business.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 404 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. If any information in the statement of registration or annual notice of registration was false when made or any arrangements or other facts described have changed, making the statement or annual notice inaccurate in any respect, the registered limited liability partnership shall promptly file in the Office of the Secretary of State a statement signed by one or more partners correcting such statement. At the time of filing of any such statement, a fee in the amount of Fifty Dollars (\$50.00) shall be paid to the Secretary of State which shall be apportioned to the General Revenue Fund of the State Treasury.

B. A registered limited liability partnership shall record any changes in its principal office, its registered agent, or the registered agent's address, by filing with the Office of the Secretary of State a statement of the change and paying a fee in the amount of Twenty-five Dollars (\$25.00) which shall be apportioned to the General Revenue Fund of the State Treasury.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 405 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. For acting as 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 which shall be apportioned to the General Revenue Fund of the State Treasury.

B. A limited liability partnership may have its registration revoked by the Secretary of State and its authority to do business in this state canceled for failure to pay the registered agent fee prescribed by this section. Before such revocation the Secretary of State shall give not less than thirty (30) days' notice sent by mail duly addressed to such limited liability partnership at its principal office or last address shown on the records of the Secretary of State of the Secretary of State's intent to revoke its authority to transact business in this state.

C. After notice required in subsection B of this section, the limited liability partnership shall be subject to a penalty and shall forfeit to the state for each day it fails to comply with the provisions of subsection B of this section, the sum of Twenty-five Dollars (\$25.00) per day but not more than Five Hundred Dollars (\$500.00) for each such offense. Any fine paid pursuant to this subsection shall be apportioned to the General Revenue Fund of the State Treasury.

D. The Secretary of State shall rescind such revocation and return the limited liability partnership to active status upon the records of the state at such time as the partnership tenders such penalties and any registered agent fees due within three (3) years of the date of the revocation to the Secretary of State.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provisions of Title 54 of the Oklahoma Statutes, subject to subsection B of this section, a partner in a registered limited liability partnership is not liable

directly or indirectly (including by way of indemnification, contribution, or otherwise) for debts, obligations and liabilities of or chargeable to the partnership or another partner or partners, whether in tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct, or malpractice committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or employee, agent, or representative of the partnership.

B. Subsection A of this section shall not affect the availability of partnership assets to satisfy debts, obligations, and liabilities of the partnership or the liability of a partner in a registered limited liability partnership for the partner's own omission, negligence, wrongful act, misconduct, or malpractice or that of any person under the partner's direct control.

C. A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages or enforce the obligations arising out of the acts, omissions, malpractice, or misconduct of the type described in subsection A of this section, unless such partner is personally liable under subsection B of this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 407 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. A limited liability partnership, or a foreign limited liability partnership transacting business in this state, shall provide security for claims against it based upon acts, errors or omissions arising out of the conduct of the business of the partnership in the manner provided in subsection B, C, D or E of this section.

B. 1. A limited liability partnership or foreign limited liability partnership is in compliance with this section if it maintains a policy or policies of insurance against liability imposed on it by law for damages arising out of claims of the type specified in subsection A of this section. Such policy or policies of insurance may be issued on a claims-made or occurrence basis; provided, that the total aggregate limit of liability thereof equals or exceeds One Million Dollars (\$1,000,000.00). The impairment or exhaustion of such aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge or defense of claims shall not require the partnership to acquire additional insurance coverage for the policy period to which the impairment or exhaustion applies. Such policy or policies of insurance may be of a type reasonably available in the commercial insurance market and may be subject to such terms, conditions, exclusions and endorsements as are typically contained in such policies.

2. A policy or policies of insurance maintained pursuant to this subsection may be subject to a deductible or self-insured retention not to exceed ten percent (10%) of the aggregate limit of liability specified in paragraph 1 of this subsection; provided, however, that a deductible or self-insured retention may exceed such amount if the partnership maintains funds in the manner provided for in subsection C of this section in the amount of the difference between the actual deductible or self-insured retention and such amount.

C. 1. A limited liability partnership or foreign limited liability partnership is in compliance with this section if it maintains funds specifically designated and segregated as security for the payment of liabilities imposed by law against the

partnership or its partners arising out of claims of the type specified in subsection A of this section, in the aggregate amount of at least One Million Dollars (\$1,000,000.00). The partnership remains in compliance with this section notwithstanding amounts paid from the designated and segregated funds in any six-month period in settling or discharging such claims; provided, that the amount of the designated and segregated funds is increased to at least One Million Dollars (\$1,000,000.00) as of the first business day of the next six-month period. A limited liability partnership or foreign limited liability partnership is in compliance with this subsection if it:

- a. maintains funds in the required amount in trust or in bank escrow in the form of cash, bank certificates of deposit or United States Treasury obligations,
- b. maintains in effect bank letters of credit in the required amount, or
- c. maintains in effect insurance or surety company bonds in the required amount.

2. Notwithstanding the pendency of other claims against the partnership, a limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subsection if within thirty (30) days after the time that a claim is initially asserted through service of a summons, complaint or comparable pleading in a judicial or administrative proceeding, the partnership has designated and segregated funds in compliance with the requirement of paragraph 1 of this subsection.

D. For purposes of satisfying the requirements of this section, a limited liability partnership or foreign limited liability partnership may aggregate security provided pursuant to subsections B and C of this section.

E. Notwithstanding any other provision of this section, if a foreign limited liability partnership maintains liability insurance, designated and segregated funds, or any combination thereof pursuant to the laws or regulations of another jurisdiction, such liability insurance, designated and segregated funds, or combination thereof shall be deemed to satisfy this section if:

1. The amount thereof is equal to or greater than the amount required pursuant to this section; or
2. The amount thereof, plus any security maintained pursuant to subsection B or C of this section, is equal to or greater than the amount required pursuant to this section.

F. Federal or state law, as applicable, shall determine whether the existence of the security required by subsection B or C of this section or the amount of such security may be revealed pursuant to the law of civil procedure governing discovery in civil cases or whether the existence or amount of that security may be admitted into evidence for consideration by a trier of fact during a civil proceeding.

G. If a limited liability partnership or foreign limited liability partnership fails to comply with this section, the partners thereof shall be liable jointly for the debts, obligations and liabilities of the partnership arising from claims specified in subsection A of this section; provided, however, that the aggregate amount for which the partners are jointly liable shall be limited to the difference between the amount of security required to be maintained pursuant to this section and the amount of security actually maintained by the partnership.

H. Notwithstanding any other provision of this section, if a limited liability partnership or foreign limited liability partnership is in substantial compliance with this section at the

time that a bankruptcy or other insolvency proceeding is commenced with respect to the partnership, the partnership shall be deemed to be in compliance with this section during the entire pendency of the proceeding. A partnership that has been the subject of such a proceeding and that conducts business after the proceeding has ended must thereafter comply with this section in order to maintain its status as a limited liability partnership or foreign limited liability partnership.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 408 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. A registered limited liability partnership, formed pursuant to an agreement governed by this act, may conduct its business, carry on its operations, and have and exercise the powers granted by this act in any state, territory, district, or possession of the United States or in any foreign country.

B. It is the intent of the Legislature that the legal existence of registered limited liability partnerships formed pursuant to an agreement governed by this act be recognized outside the boundaries of this state and that the laws of this state governing such registered limited liability partnerships transacting business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

C. It is the policy of this state that the internal affairs of registered limited liability partnerships, formed pursuant to an agreement governed by this act, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership or another partner or partners, shall be subject to and governed by the laws of this state.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 409 of Title 54, unless there is created a duplication in numbering, reads as follows:

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

1. Pay to the Secretary of State a registration fee in the amount of Two Hundred Dollars (\$200.00) which shall be apportioned to the General Revenue Fund of the State Treasury;

2. Provide the Secretary of State with an original certificate from the certifying officer of the jurisdiction of the foreign limited liability partnership's organization attesting to the foreign limited liability partnership's organization under the laws of such jurisdiction on a form to be provided by the Secretary of State; and

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

- a. the name of the foreign limited liability partnership and, if applicable, the name under which the foreign limited liability partnership will conduct business, if different than the legal name of the partnership,
- b. the state or other jurisdiction and date of its organization,
- c. the name and street address of a registered agent in this state which agent shall be an individual resident of this state, a domestic corporation, limited liability company, limited partnership or limited liability partnership; or a foreign corporation, limited liability company, limited partnership or

- limited liability partnership having a place of business and authorized to do business in this state, which the partnership shall be required to maintain,
- d. a statement that the Office of the Secretary of State is appointed the agent of the foreign limited liability partnership for service of process if no agent has been appointed under 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 state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited liability partnership, and
 - f. such additional information as may be necessary or appropriate in order to enable the Office of the Secretary of State to determine whether such limited liability partnership is entitled to transact business in this state.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 410 of Title 54, unless there is created a duplication in numbering, reads as follows:

If the Office of the Secretary of State finds that an application for registration conforms to the provisions of this act and all requisite fees have been paid, it shall:

1. Endorse on the applications the word "filed", and the month, day, and year of the filing;
2. File in its office one copy of the application;
3. Issue a certificate of registration to transact business in this state; and
4. Return the certificate of registration to the person who filed the application or his representative.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 411 of Title 54, unless there is created a duplication in numbering, reads as follows:

No certificate of registration shall be issued to a foreign limited liability partnership if the name of the partnership conflicts with another name filed with the Secretary of State. The foreign limited liability partnership may register under the conflicting name if the partnership seeking registration:

1. Files consent to similar name signed by the other party who agrees to change its name to eliminate the conflict or to withdraw from the state or dissolve its business; or
2. Files a statement with the Secretary of State executed by one or more partners authorized to execute on behalf of the partnership duly adopting a fictitious name that is available, which shall be used to the exclusion of its true name when transacting business within this state.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 412 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. If any statement in the application for registration of a foreign limited liability partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability partnership shall promptly file in the Office of the Secretary of State a certificate, signed by a partner, correcting the statement and pay a fee of One Hundred Dollars (\$100.00) which shall be apportioned to the General Revenue Fund of the State Treasury.

B. A registered foreign limited liability partnership shall record any changes in its principal office, its registered agent, or the registered agent's address, by filing with the Office of the Secretary of State a statement of the change and paying a fee of Twenty-five Dollars (\$25.00) which shall be apportioned to the General Revenue Fund of the State Treasury.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 413 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. A foreign limited liability partnership authorized to transact business in this state may withdraw from the state upon procuring from the Office of the Secretary of State a certificate of withdrawal. In order to procure such certificate, the foreign limited liability partnership shall file with the Office of the Secretary of State an application for withdrawal and pay a fee of One Hundred Dollars (\$100.00) which shall be apportioned to the General Revenue Fund of the State Treasury. The application for withdrawal shall set forth:

1. The name of the foreign limited liability partnership and the state or other jurisdiction under the laws of which it is organized;

2. That the foreign limited liability partnership is not transacting business in this state;

3. That the foreign limited liability partnership surrenders its certificate of registration to transact business in this state;

4. That the foreign limited liability partnership revokes the authority of its registered agent for service of process in this state and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability partnership was authorized to transact business in this state may thereafter be made on such foreign limited liability partnership by service thereof upon the Office of the Secretary of State; and

5. An address to which a person may mail a copy of any process against the foreign limited liability partnership.

B. The application for withdrawal shall be executed by the foreign limited liability partnership by one of its partners, or, if the foreign limited liability partnership is in the hands of a receiver or trustee, by such receiver or trustee on behalf of the foreign limited liability partnership.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 414 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. A foreign limited liability partnership transacting business in this state may not maintain an action, suit, or proceeding in a court of this state until it has registered in this state as provided in this act.

B. The failure of a foreign limited liability partnership to register in this state does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any action, suit, or proceeding in any court of this state.

C. A foreign limited liability partnership, by transacting business in this state without registration, appoints the Office of the Secretary of State as its agent for service of process with respect to a cause of action arising out of the transaction of business in this state.

D. A partner of a foreign limited liability partnership is not liable for the debts and obligations of the limited liability partnership solely by reason of such limited liability partnership

having transacted business in this state without a valid certificate of registration.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 415 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. The following activities of a foreign limited liability partnership, among others, do not constitute transacting business within the meaning of this act:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of its partners or carrying on any other activities concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability partnership's own securities or maintaining trustees or depositaries with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
7. Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
8. Securing or collecting debts or enforcing mortgages and security interest in property securing the debts;
9. Holding, protecting, renting, maintaining and operating real or personal property in this state so acquired;
10. Selling or transferring title to property in this state to any person; or
11. Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature.

B. For the purposes of this section, any foreign limited liability partnership which owns income-producing real or tangible personal property in this state, other than property exempted by subsection A of this section, will be considered transacting business in this state.

C. This section does not apply in determining the contracts or activities that may subject a foreign limited liability partnership to service of process or taxation in this state or to regulation under any other law of this state.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 416 of Title 54, unless there is created a duplication in numbering, reads as follows:

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 417 of Title 54, unless there is created a duplication in numbering, reads as follows:

- A. Subject to the Constitution of this state:
1. The laws of the state or other jurisdiction under which a foreign limited liability partnership is organized shall govern its organization and internal affairs and the liability of its partners; and
 2. A foreign limited liability partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

B. A foreign limited liability partnership holding a valid registration in this state shall have no greater rights and privileges than a domestic limited liability partnership. The

registration shall not be deemed to authorize the foreign limited liability partnership to exercise any of its powers or purposes that a domestic limited liability partnership is forbidden by law to exercise in this state.

SECTION 18. This act shall become effective November 1, 1996.

Passed the House of Representatives the 20th day of May, 1996.

Speaker of the House of
Representatives

Passed the Senate the 20th day of May, 1996.

President of the Senate