

ENROLLED SENATE
BILL NO. 432

By: Hendrick of the Senate

and

Morgan of the House

An Act relating to limited liability companies; amending Section 2, Chapter 148, O.S.L. 1992, as amended by Section 2, Chapter 366, O.S.L. 1993, Section 5, Chapter 148, O.S.L. 1992, Section 6, Chapter 148, O.S.L. 1992, as amended by Section 3, Chapter 366, O.S.L. 1993, Section 27, Chapter 148, O.S.L. 1992, Section 34, Chapter 148, O.S.L. 1992, as last amended by Section 24, Chapter 226, O.S.L. 1996, Section 37, Chapter 148, O.S.L. 1992, as last amended by Section 26, Chapter 226, O.S.L. 1996, Section 38, Chapter 148, O.S.L. 1992, as last amended by Section 27, Chapter 226, O.S.L. 1996 and Section 55, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Sections 2001, 2004, 2005, 2026, 2033, 2036, 2037 and 2054), which relate to limited liability companies; modifying definitions; reducing number of persons who may form a limited liability company; modifying contents of articles of organization; authorizing perpetual existence; modifying time for certain distributions and deleting requirement of unanimous agreement for other times; making membership interest nontransferable except by assignment; clarifying effect of and procedure for removal of member; deleting specified events when a person ceases to be a member; clarifying language; authorizing

certain provisions in operating agreements for expulsion of a member; expanding authority of domestic limited liability company to merge or consolidate with one or more limited liability companies or other business entities; modifying and conforming language; repealing Section 28, Chapter 148, O.S.L. 1992, as amended by Section 15, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1996, Section 2027), which relates to withdrawal of members; and providing an effective date.

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

SECTION 1. AMENDATORY Section 2, Chapter 148, O.S.L. 1992, as amended by Section 2, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1996, Section 2001), is amended to read as follows:

Section 2001. As used in this act, unless the context otherwise requires:

1. "Articles of organization" means documents filed under Section 2019 of this title for the purpose of forming a limited liability company;
2. "Bankrupt" means bankrupt under the United States Bankruptcy Code, as amended, or insolvent under any state insolvency act;
3. "Business" means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;
4. "Capital contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;
5. "Capital interest" means the fair market value as of the date contributed of a member's capital contribution as adjusted for any additional capital contributions or withdrawals;
6. "Corporation" means a corporation formed under the laws of this state or a foreign corporation as defined in this section;
7. "Court" includes every court and judge having jurisdiction in the case;
8. "Foreign corporation" means a corporation formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;
9. "Foreign limited liability company" means an entity that is:
 - a. an unincorporated association,
 - b. organized under the laws of a state other than the laws of this state or organized under the laws of any foreign country,
 - c. organized under a statute pursuant to which an association may be formed that affords to each of its

members limited liability with respect to the liabilities of the entity, and

d. not required to be registered or organized under any statute of this state other than this act;

10. "Foreign limited partnership" means a limited partnership formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

11. "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association or proprietorship having one or more members that is organized and existing under the laws of this state;

12. "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership as defined in this section;

13. "Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement;

14. "Member" means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act;

15. "Membership interest" or "interest" means a member's rights in the limited liability company, collectively, including the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management;

16. "Operating agreement" means any agreement of the members as to the affairs of a limited liability company and the conduct of its business;

17. "Person" means an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity; and

18. "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SECTION 2. AMENDATORY Section 5, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Section 2004), is amended to read as follows:

Section 2004. A. One or more persons may form a limited liability company upon the filing of executed articles of organization with the Office of the Secretary of State.

B. 1. When the Office of the Secretary of State files the articles of organization, the proposed organization becomes a limited liability company under the name and subject to the purposes, conditions, and provisions stated in the articles.

2. Filing of the articles by the Office of the Secretary of State is conclusive evidence of the formation of the limited liability company.

SECTION 3. AMENDATORY Section 6, Chapter 148, O.S.L. 1992, as amended by Section 3, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1996, Section 2005), is amended to read as follows:

Section 2005. A. The articles of organization shall set forth:

1. The name of the limited liability company;

2. The term of the existence of the limited liability company which may be perpetual; and

3. The street address of its principal place of business in this state and the name and address of its resident agent in this state.

B. It is not necessary to set out in the articles of organization any of the powers enumerated in this act.

SECTION 4. AMENDATORY Section 27, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Section 2026), is amended to read as follows:

Section 2026. Except as otherwise provided in this act, a member is entitled to receive distributions from a limited liability company before the dissolution and winding up of the limited liability company to the extent and at the times upon which the members agree or as provided in the operating agreement.

SECTION 5. AMENDATORY Section 34, Chapter 148, O.S.L. 1992, as last amended by Section 24, Chapter 226, O.S.L. 1996 (18 O.S. Supp. 1996, Section 2033), is amended to read as follows:

Section 2033. A. Unless otherwise provided in an operating agreement:

1. A membership interest is not transferable; provided, however, that a member may assign a membership interest in whole or in part;

2. An assignment of a membership interest does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights or powers of a member;

3. An assignment entitles the assignee to receive any distribution or distributions to which the assignor was entitled to the extent assigned;

4. Unless the assignee of an interest in a limited liability company becomes a member by virtue of that interest, the assignor continues to be a member and to have the power to exercise any rights of a member, unless the assignor is removed as a member either in accordance with the operating agreement or, after having assigned all of the membership interest, by an affirmative vote of the members who have not assigned their interests. The removal of an assignor shall not, by itself, cause the assignee to become a member;

5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

6. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

B. The operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a certificate and may make other provisions with respect to such certificates.

C. Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.

SECTION 6. AMENDATORY Section 37, Chapter 148, O.S.L. 1992, as last amended by Section 26, Chapter 226, O.S.L. 1996 (18 O.S. Supp. 1996, Section 2036), is amended to read as follows:

Section 2036. A. Unless the operating agreement specifically permits in writing the power to withdraw voluntarily, a member may not withdraw at any time. If the operating agreement specifically provides in writing the power to withdraw voluntarily, but the withdrawal occurs as a result of wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in

addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising the power to withdraw if such power is permitted in the operating agreement.

B. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative shall have all of the rights of an assignee of the member's interest.

C. The operating agreement may provide for the expulsion of a member, with or without cause, which shall include reasonable provision for the distributable interest.

SECTION 7. AMENDATORY Section 38, Chapter 148, O.S.L. 1992, as last amended by Section 27, Chapter 226, O.S.L. 1996 (18 O.S. Supp. 1996, Section 2037), is amended to read as follows:

Section 2037. A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

1. The occurrence of the latest date on which the limited liability company is to dissolve set forth in the articles of organization;

2. The occurrence of events specified in writing in the operating agreement;

3. The written consent of all of the members; or

4. Entry of a decree of judicial dissolution under Section 2038 of this title.

SECTION 8. AMENDATORY Section 55, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Section 2054), is amended to read as follows:

Section 2054. A. Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic or foreign limited liability companies or other business entities. As used in this section, "business entity" means a domestic or foreign corporation, business trust, common law trust, or unincorporated business including a partnership, whether general or limited.

B. Unless otherwise provided in the articles of organization or the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by a majority of the members or, if there is more than one class or group of members, then by a majority of each class or group. 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 liability company is merging or consolidating pursuant to this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Office of the Secretary of State. The articles of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the limited liability companies or other business entities which are to merge or consolidate;

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

3. The name of the surviving or resulting domestic limited liability company 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 articles 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 liability company 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 liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;

7. In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;

8. In the case of a consolidation, that the articles of organization of the resulting domestic limited liability company shall be as set forth in an attachment to the articles of consolidation; and

9. If the surviving or resulting entity is not a domestic limited liability company or business entity formed or organized pursuant to the laws of this state, a statement that the surviving or resulting other business entity agrees to be served with process in this state in any action, suit, or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; irrevocably appoints the Secretary of State as its agent to accept service of process in any action, suit, or proceeding; and specifies the address to which process shall be mailed to the entity by the Secretary of State.

D. Any failure to file the articles of merger or consolidation in connection with a merger or consolidation which was effective prior to September 1, 1992, shall not affect the validity or effectiveness of any such merger or consolidation.

E. A merger or consolidation shall be effective upon the filing with the Secretary of State of articles of merger or consolidation, unless a future effective date or time is provided in the articles of merger or consolidation.

F. Articles of merger or consolidation shall act as articles of dissolution for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

G. Once any merger or consolidation is 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 liability companies and other business entities that have merged or consolidated and all property, real, personal, and mixed, and all debts due to each domestic limited liability company or other business entity, as well as all other things and causes of action belonging to each domestic limited liability company or other business entity shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each domestic limited liability company or other business entity that has merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this state, in any domestic limited liability company or other business entity 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 each domestic limited liability company or other business entity shall be preserved unimpaired. All debts, liabilities and duties of each domestic limited liability company or other business entity that has merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other

business entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs pursuant to Section 2037 of this title or pay its liabilities and distribute its assets pursuant to Section 2040 of this title.

SECTION 9. REPEALER Section 28, Chapter 148, O.S.L. 1992, as amended by Section 15, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1996, Section 2027), is hereby repealed.

SECTION 10. This act shall become effective November 1, 1997.