

SHORT TITLE: Partnership; allowing additional method of providing security for claims against limited liability partnership; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 519

By: Fisher

AS INTRODUCED

An Act relating to partnership; amending Section 7, Chapter 223, O.S.L. 1996 (54 O.S. Supp. 1996, Section 407), which relates to the Oklahoma Limited Liability Partnership Act; allowing additional method of providing security for certain claims against certain partnership; and providing an effective date.

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

SECTION 1. AMENDATORY Section 7, Chapter 223, O.S.L. 1996 (54 O.S. Supp. 1996, Section 407), is amended to read as follows:

Section 407. 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~~ The 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. If the members of a limited liability partnership or foreign limited liability partnership are passive investors, the limited liability partnership or foreign limited liability partnership may comply with this section if it maintains a general liability insurance policy or policies in the aggregate amount of at least 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.

3. 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~~ paragraphs 1 and 2 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 2. This act shall become effective November 1, 1997.

46-1-0342

KSM