HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1996 By: Grau

AS INTRODUCED

An Act relating to corporations; creating the Revised Uniform Unincorporated Nonprofit Association Act; providing short title; defining terms; providing for conflicts of law; specifying governing law; specifying powers and duration of unincorporated nonprofit associations; providing for the ownership and transfer of property; specifying liability parameters; providing for claims, venue and judgments of unincorporated nonprofit associations; providing for service agents and service of process; requiring approval of members for certain actions; providing procedures and requirements for meetings and members of unincorporated nonprofit associations; providing requirements and duties of managers of unincorporated nonprofit associations; providing for compensation and reimbursement of members and managers; providing procedures for dissolution, termination and merger of unincorporated nonprofit associations; providing for interpretation and applicability of act; 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 870.1 of Title 18, unless there is created a duplication in numbering, reads as follows:

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This act shall be known and may be cited as the "Revised Uniform Unincorporated Nonprofit Association Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.2 of Title 18, unless there is created a duplication in numbering, reads as follows:

As used in the Revised Uniform Unincorporated Nonprofit Association Act:

1. “Established practices” means the practices used by an unincorporated nonprofit association without material change during the most recent five (5) years of its existence, or if it has existed for less than five (5) years, during its entire existence;

2. “Governing principles” means the agreements, whether oral, in a record, or implied from its established practices, that govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers. The term includes any amendment or restatement of the agreements constituting the governing principles;

3. “Manager” means a person that is responsible, alone or in concert with others, for the management of an unincorporated nonprofit association;

4. “Member” means a person that, under the governing principles, may participate in the selection of persons authorized to manage the affairs of the unincorporated nonprofit association or

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in the development of the policies and activities of the association;

5. "Person" means an individual, corporation, business trust, statutory entity trust, estate, trust, partnership, limited liability company, cooperative, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

6. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

7. "State" means a state of the United States, the District of Columbia, Puerto Rico, United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

8. "Unincorporated nonprofit association" means an unincorporated organization consisting of two or more members joined under an agreement that is oral or in a record, for one or more common, nonprofit purposes. The term does not include:

a. a trust,

b. a marriage, domestic partnership, common law domestic relationship, civil union, or other domestic living arrangement,

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c. an organization formed under any other statute that governs the organization and operation of unincorporated associations,

d. a joint tenancy, tenancy in common, or tenancy by the entireties even if the co-owners share use of the property for a nonprofit purpose, or

e. a relationship under an agreement in a record that expressly provides that the relationship between the parties does not create an unincorporated nonprofit association.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.3 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Principles of law and equity supplement the Revised Uniform Unincorporated Nonprofit Association Act unless displaced by a particular provision of it.

B. A statute governing a specific type of unincorporated nonprofit association prevails over an inconsistent provision in the Revised Uniform Unincorporated Nonprofit Association Act.

C. The Revised Uniform Unincorporated Nonprofit Association Act supplements the law of this state that applies to nonprofit associations operating in this state. If a conflict exists, the state law applies.

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SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.4 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection B of this section, the law of this state governs the operation in this state of all unincorporated nonprofit associations formed or operating in this state.

B. Unless the governing principles specify a different jurisdiction, the law of the jurisdiction in which an unincorporated nonprofit association has its main place of activities governs the internal affairs of the association.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.5 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. An unincorporated nonprofit association is a legal entity distinct from its members and managers.

B. An unincorporated nonprofit association has perpetual duration unless the governing principles specify otherwise.

C. An unincorporated nonprofit association has the same powers as an individual to do all things necessary or convenient to carry on its purposes.

D. An unincorporated nonprofit association may engage in profit-making activities but profits from any such activities must be used or set aside for the nonprofit purposes of the association.

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SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.6 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. An unincorporated nonprofit association may acquire, hold, encumber, or transfer in its name an interest in real or personal property.

B. An unincorporated nonprofit association may be a beneficiary of a trust or contract, a legatee or a devisee.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.7 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. In this section, "statement of authority" means a statement authorizing a person to transfer an interest in real property held in the name of an unincorporated nonprofit association.

B. An interest in real property held in the name of an unincorporated nonprofit association may be transferred by a person authorized to do so in a statement of authority filed by the association in the office of the county clerk in which a transfer of the property would be filed.

C. A statement of authority must set forth:

1. The name of the unincorporated nonprofit association;

2. The association's street address in this state or, if the association does not have an street address in this state, the

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street address in the state in which the association has its main place of activities;

3. That the association is an unincorporated nonprofit association; and

4. The name, title, or position of a person authorized to transfer an estate or interest in real property held in the name of the association.

D. A statement of authority must be executed in the same manner as a deed by a person other than the person authorized in the statement to transfer the interest.

E. The county clerk may collect a fee for filing a statement of authority in the amount authorized for filing deed.

F. A document amending, revoking, or canceling a statement of authority or stating that the statement is unauthorized or erroneous must meet the requirements for executing and filing an original statement.

G. Unless canceled earlier, a filed statement of authority and its most recent amendment expire five (5) years after the date of the most recent filing.

H. If the record title to real property is in the name of an unincorporated nonprofit association and the statement of authority is filed in the office of the county clerk in which a transfer of the property would be filed, the authority of the person named in

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the statement to transfer is conclusive in favor of a person that gives value without notice that the person lacks authority.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.8 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A debt, obligation, or other liability of an unincorporated nonprofit association, whether arising in contract, tort, or otherwise:

1. Is solely the debt, obligation, or other liability of the association; and

2. Does not become a debt, obligation, or other liability of a member or manager solely because the member acts as a member or the manager acts as a manager.

B. The status of a person as a member or manager does not prevent or restrict law other than the Revised Uniform Unincorporated Nonprofit Association Act from imposing liability on the person or the association because of the conduct of the person.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.9 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. An unincorporated nonprofit association may sue or be sued in its own name.

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B. A member or manager may assert a claim the member or manager has against the unincorporated nonprofit association. An association may assert a claim it has against a member or manager.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.10 of Title 18, unless there is created a duplication in numbering, reads as follows:

A judgment or order against an unincorporated nonprofit association is not by itself a judgment or order against a member or manager.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.11 of Title 18, unless there is created a duplication in numbering, reads as follows:

In any action or proceeding against an unincorporated nonprofit association, process may be served on a manager of the association or in any other manner authorized by the law of this state.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.12 of Title 18, unless there is created a duplication in numbering, reads as follows:

An action or proceeding against an unincorporated nonprofit association does not abate merely because of a change in its members or managers.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.13 of Title 18, unless there is created a duplication in numbering, reads as follows:

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Unless otherwise provided by law other than the Revised Uniform Unincorporated Nonprofit Association Act, venue of an action against an unincorporated nonprofit association brought in this state is determined under the statutes applicable to an action brought in this state against a corporation.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.14 of Title 18, unless there is created a duplication in numbering, reads as follows:

A member is not an agent of the association solely by reason of being a member.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.15 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in the governing principles, an unincorporated nonprofit association must have the approval of its members to:

1. Admit, suspend, dismiss, or expel a member;

2. Select or dismiss a manager;

3. Adopt, amend, or repeal the governing principles;

4. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the association, with or without the goodwill of the association, outside the ordinary course of its activities;

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5. Dissolve under paragraph 2 of subsection A of Section 27 of this act;

6. Undertake any other act outside the ordinary course of the activities of the association; or

7. Determine the policy and purposes of the association.

B. An unincorporated nonprofit association must have the approval of the members to do any other act or exercise a right that the governing principles require to be approved by members.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.16 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Unless the governing principles provide otherwise:

1. Approval of a matter by members requires an affirmative majority of the votes cast at a meeting of members; and

2. Each member is entitled to one vote on each matter that is submitted for approval by members.

B. Notice and quorum requirements for member meetings and the conduct of meetings of members are determined by the governing principles.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.17 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A member does not have a fiduciary duty to an unincorporated nonprofit association or to another member solely by being a member.

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B. A member shall discharge the duties to the unincorporated nonprofit association and the other members and exercise any rights under the Revised Uniform Unincorporated Nonprofit Association Act consistent with the governing principles and the obligation of good faith and fair dealing.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.18 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A person becomes a member and may be suspended, dismissed, or expelled in accordance with the governing principles of the association. If there are no applicable governing principles, a person may become a member or be suspended, dismissed, or expelled from an association only by a vote of its members. A person may not be admitted as a member without the consent of the person.

B. Unless the governing principles provide otherwise, the suspension, dismissal, or expulsion of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before the suspension, dismissal, or expulsion.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.19 of Title 18, unless there is created a duplication in numbering, reads as follows:

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A. A member may resign as a member in accordance with the governing principles. In the absence of applicable governing principles, a member may resign at any time.

B. Unless the governing principles provide otherwise, resignation of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before resignation.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.20 of Title 18, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in the governing principles, the interest of a member or any right under the governing principles is not transferable.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.21 of Title 18, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in the Revised Uniform Unincorporated Nonprofit Association Act or the governing principles:

1. Only the members may select a manager or managers;

2. A manager may be a member or a nonmember;

3. If a manager is not selected, all members are managers;

4. Each manager has equal rights in the management and conduct of the activities of the association;

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5. All matters relating to the activities of the association are decided by its managers except for matters reserved for approval by members in Section 15 of this act; and

6. A difference among managers is decided by a majority of the managers.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.22 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A manager owes to the unincorporated nonprofit association and to its members the fiduciary duties of loyalty and care.

B. A manager shall manage the unincorporated nonprofit association in good faith, in a manner the manager reasonably believes to be in the best interests of the association, and with such care, including reasonable inquiry, as a prudent person would reasonably exercise in a similar position and under similar circumstances. A manager may rely in good faith upon any opinion, report, statement, or other information provided by another person that the manager reasonably believes is a competent and reliable source for the information.

C. After full disclosure of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty by a manager may be authorized or ratified by a majority of the members that are not interested directly or indirectly in the act or transaction.

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D. A manager that makes a business judgment in good faith satisfies the duties specified in subsection A of this section if the manager:

1. Is not interested, directly or indirectly, in the subject of the business judgment and is otherwise able to exercise independent judgment;

2. Is informed with respect to the subject of the business judgment to the extent the manager reasonably believes to be appropriate under the circumstances; and

3. Believes that the business judgment is in the best interests of the unincorporated nonprofit association and in accordance with its purposes.

E. The governing principles in a record may limit or eliminate the liability of a manager to the unincorporated nonprofit association or its members for damages for any action taken, or for failure to take any action, as a manager, except liability for:

1. The amount of financial benefit improperly received by a manager;

2. An intentional infliction of harm on the association or one or more of its members;

3. An intentional violation of criminal law;

4. Breach of the duty of loyalty; or

5. Improper distributions.

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SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.23 of Title 18, unless there is created a duplication in numbering, reads as follows:

Notice and quorum requirements for meetings of managers and the conduct of meetings of managers are determined by the governing principles.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.24 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. On reasonable notice, a member or manager of an unincorporated nonprofit association may inspect and copy during the regular operating hours of the unincorporated nonprofit association, at a reasonable location specified by the association, any record maintained by the association regarding its activities, financial condition, and other circumstances, to the extent the information is material to the rights and duties of the member or manager under the governing principles.

B. An unincorporated nonprofit association may impose reasonable restrictions on access to and use of information to be furnished under this section, including designating the information confidential and imposing obligations of nondisclosure and safeguarding on the recipient.

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C. An unincorporated nonprofit association may charge a person that makes a demand under this section reasonable copying costs, limited to the costs of labor and materials.

D. A former member or manager is entitled to information to which the member or manager was entitled while a member or manager if the information pertains to the period during which the person was a member or manager, the former member or manager seeks the information in good faith, and the former member or manager satisfies subsections A through C of this section.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.25 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection B of this section, an unincorporated nonprofit association may not pay dividends or make distributions to a member or manager.

B. An unincorporated nonprofit association may:

1. Pay reasonable compensation or reimburse reasonable expenses to a member or manager for services rendered;

2. Confer benefits on a member or manager in conformity with its nonprofit purposes;

3. Repurchase a membership and repay a capital contribution made by a member to the extent authorized by its governing principles; or

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4. Make distributions of property to members upon winding up and termination to the extent permitted by Section 28 of this act.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.26 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in the governing principles, an unincorporated nonprofit association may reimburse a member or manager for authorized expenses reasonably incurred in the course of the activities of the member or manager on behalf of the association.

B. An unincorporated nonprofit association may indemnify a member or manager for any debt, obligation, or other liability incurred in the course of the activities of the member or manager on behalf of the association if the person seeking indemnification has complied with Sections 17 and 22 of this act. Governing principles in a record may broaden or limit indemnification.

C. If a person is made or threatened to be made a party in an action based on the activities of that person on behalf of an unincorporated nonprofit association and the person makes a request in a record to the association, a majority of the disinterested managers may approve in a record advance payment, or reimbursement, by the association, of all or a part of the reasonable expenses, including attorney fees and costs, incurred by the person before the final disposition of the proceeding. To be entitled to an advance

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payment or reimbursement, the person must state in a record that the person has a good faith belief that the criteria for indemnification in subsection B of this section have been satisfied and that the person will repay the amounts advanced or reimbursed if the criteria for payment have not been satisfied. The governing principles in a record may broaden or limit the advance payments or reimbursements.

D. An unincorporated nonprofit association may purchase insurance on behalf of a member or manager for liability asserted against or incurred by the member or manager in the capacity of a member or manager, whether or not the association has authority under the Revised Uniform Unincorporated Nonprofit Association Act to reimburse, indemnify, or advance expenses to the member or manager against the liability.

E. The rights of reimbursement, indemnification, and advancement of expenses under this section apply to a former member or manager for an activity undertaken on behalf of the unincorporated nonprofit association while a member or manager.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.27 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. An unincorporated nonprofit association may be dissolved as follows:

1. If the governing principles provide a time or method for dissolution, at that time or by that method;

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2. If the governing principles do not provide a time or method for dissolution, upon approval by the members;

3. If no member can be located and the operations of the association have been discontinued for at least three (3) years, by the managers or, if the association has no current manager, by its last manager;

4. By court order; or

5. Under law other than the Revised Uniform Unincorporated Nonprofit Association Act.

B. After dissolution, an unincorporated nonprofit association continues in existence until its activities have been wound up and it is terminated pursuant to Section 28 of this act.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.28 of Title 18, unless there is created a duplication in numbering, reads as follows:

Winding up and termination of an unincorporated nonprofit association must proceed in accordance with the following rules:

1. All known debts and liabilities must be paid or adequately provided for;

2. Any property subject to a condition requiring return to the person designated by the donor must be transferred to that person;

3. Any property subject to a trust must be distributed in accordance with the trust agreement; and

4. Any remaining property must be distributed as follows:

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a. as required by law other than the Revised Uniform Unincorporated Nonprofit Association Act that requires assets of an association to be distributed to another person with similar nonprofit purposes,

b. in accordance with the governing principles of the association or in the absence of applicable governing principles, to the members of the association per capita or as the members direct, or

c. if neither subparagraph a nor b of this paragraph applies, under the Uniform Unclaimed Property Act.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.29 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. If, before the effective date of the Revised Uniform Unincorporated Nonprofit Association Act, an interest in property was by terms of a transfer purportedly transferred to an unincorporated nonprofit association but under the law of this state the interest did not vest in the association, or in one or more persons on behalf of the association under subsection B of this section, on the effective date of the Revised Uniform Unincorporated Nonprofit Association Act the interest vests in the association, unless the parties to the transfer have treated the transfer as ineffective.

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B. If, before the effective date of the Revised Uniform Unincorporated Nonprofit Association Act, an interest in property was by terms of a transfer purportedly transferred to an unincorporated nonprofit association, but the interest was vested in one or more persons to hold the interest for members of the association, on or after the effective date of the Revised Uniform Unincorporated Nonprofit Association Act, the persons, or their successors in interest, may transfer the interest to the association in its name, or the association may require that the interest be transferred to it in its name.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.30 of Title 18, unless there is created a duplication in numbering, reads as follows:

In applying and construing the Revised Uniform Unincorporated Nonprofit Association Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.31 of Title 18, unless there is created a duplication in numbering, reads as follows:

The Revised Uniform Unincorporated Nonprofit Association Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C., Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of

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that act, 15 U.S.C., Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C., Section 7003(b).

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.32 of Title 18, unless there is created a duplication in numbering, reads as follows:

The Revised Uniform Unincorporated Nonprofit Association Act does not affect an action or proceeding commenced or right accrued before the Revised Uniform Unincorporated Nonprofit Association Act takes effect.

SECTION 33. This act shall become effective November 1, 2013.

COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND FINANCIAL SERVICES, dated 02/07/2013 - DO PASS.

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