STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 994 By: Sharp

AS INTRODUCED

An Act relating to limited liability companies; amending 18 O.S. 2011, Section 2054.3, which relates to appraisal rights; establishing appraisal rights for members of limited liability companies under certain circumstances; authorizing modification of certain appraisal rights; establishing exceptions to entitlement to appraisal rights; clarifying applicability of provisions; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 18 O.S. 2011, Section 2054.3, is amended to read as follows:

Section 2054.3. A. A member of a limited liability company is entitled to appraisal rights and to obtain payment of the fair value of that member's membership interest in:

1. A merger of a limited liability company if the member could vote upon the merger; or

2. A conversion of a limited liability company if the member could vote upon the conversion.

B. An operating agreement or other agreement may provide that contractual appraisal rights with respect to a membership interest or another interest in a limited liability company shall be available for any class or group of members or membership interests in connection with any amendment of an operating agreement, any merger or consolidation to which the limited liability company is a constituent party, any conversion of the limited liability company to another business entity, any transfer to or domestication in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets. The district court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

C. A limited liability company may modify, restrict or eliminate the appraisal rights provided in this section in its operating agreement if the provision modifying, restricting or eliminating the appraisal rights is authorized by each member whose appraisal rights are being modified, restricted or eliminated. An operating agreement containing an express waiver of appraisal rights approved by a member constitutes a waiver of appraisal rights with respect to the member to the extent provided in the operating agreement.

D. To the extent that appraisal rights are available under this section, subsections D through K of Section 1091 of this title

govern the procedures with respect to such appraisal rights as between the limited liability company and its members.

E. Notwithstanding subsection A of this section, appraisal rights are subject to the following provisions:

1. Appraisal rights are not available for holders of a membership interest that is:

a. a covered security under Section 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended,

b. listed on a national securities exchange,

c. held of record by more than 2,000 members, or

d. issued by an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and subject to being redeemed at the option of the holder at net asset value.

2. The applicability of paragraph 1 of this subsection shall be determined as of the date fixed to determine the members entitled to receive notice of and to vote upon the appraisal event, or the day before the effective date of such appraisal event if there is no meeting of the members to vote upon the appraisal event.

3. This subsection shall not apply to, and appraisal rights shall be available pursuant to subsection A of this section for, any members who are required by the appraisal event to accept for their membership interests anything other than cash or an ownership

interest in an entity that satisfies the standards provided in paragraph 1 of this subsection at the time the appraisal event becomes effective.

4. This subsection shall not apply to, and appraisal rights shall be available pursuant to subsection A of this section for, the holder of a membership interest if:

a. any of the members' interests in the limited liability company or the limited liability company's assets are being acquired or converted, whether by merger, conversion or otherwise, pursuant to the appraisal event by a person or by an affiliate of a person who:

(1) is or at any time in the one-year period immediately preceding approval of the appraisal event was the beneficial owner of twenty percent (20%) or more of those interests in the limited liability company entitled to vote on the appraisal event, excluding any such interests acquired pursuant to an offer for all interests having voting rights, if the offer was made within one year before the appraisal event for consideration of the same kind and of a value equal to or less than that paid in connection with the appraisal event, or

(2) directly or indirectly has, or at any time in the one-year period immediately preceding approval of the appraisal event had, the power, contractually or otherwise, to cause the appointment or election of any senior executives or managers of the limited liability company, or

b. any of the members' interests in the limited liability company or the limited liability company's assets are being acquired or converted, whether by merger, conversion or otherwise, pursuant to the appraisal event by a person, or by an affiliate of a person, who is or at any time in the one-year period immediately preceding approval of the appraisal event was a senior executive of the limited liability company or a senior executive of any affiliate of the limited liability company, and that senior executive will receive, as a result of the limited liability company action, a financial benefit not generally available to members, other than:

(1) employment, consulting, retirement or similar benefits established separately and not as part, or in contemplation, of the appraisal event,

(2) employment, consulting, retirement or similar benefits established in contemplation, or as

part, of the appraisal event which are not more favorable than those existing before the appraisal event or, if more favorable, which have been approved by the limited liability company, or

(3) in the case of a manager of the limited liability company who will, during or as the result of the appraisal event, become a manager, general partner or director of the surviving or converted entity or one of its affiliates, those rights and benefits as a manager, general partner or director which are provided on the same basis as those afforded by the surviving or converted entity generally to other managers, general partners or directors of the surviving or converted entity or its affiliate.

5. For the purposes of division (1) of subparagraph a of paragraph 4 of this subsection, the term "beneficial owner" means a person who, directly or indirectly, through a contract, arrangement or understanding, other than a revocable proxy, has or shares the right to vote or to direct the voting of an interest in a limited liability company with respect to approval of the appraisal event; provided, however, a member of a national securities exchange may not be deemed to be a beneficial owner of an interest in a limited

liability company held directly or indirectly by it on behalf of another person solely because the member is the record holder of interests in the limited liability company if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may substantially affect the rights or privileges of the holders of the interests in the limited liability company to be voted. If two or more persons agree to act together to vote the interests, each member of the group is deemed to acquire beneficial ownership, as of the date of the agreement, of all voting interests in the limited liability company beneficially owned by another member or members of the group.

SECTION 2. This act shall become effective November 1, 2016.

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