

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 HOUSE BILL 1256

By: Kerbs

7 AS INTRODUCED

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

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

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

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

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

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

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

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

22 D. To the extent that appraisal rights are available under this
23 section, subsections D through K of Section 1091 of this title
24

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

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

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

- 7 a. a covered security under Section 18(b)(1)(A) or (B) of
8 the Securities Act of 1933, as amended,
- 9 b. listed on a national securities exchange,
- 10 c. held of record by more than 2,000 members, or
- 11 d. issued by an open-end management investment company
12 registered with the Securities and Exchange Commission
13 under the Investment Company Act of 1940 and subject
14 to being redeemed at the option of the holder at net
15 asset value;

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

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

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

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

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

12 (1) is or at any time in the one-year period
13 immediately preceding approval of the appraisal
14 event was the beneficial owner of twenty percent
15 (20%) or more of those interests in the limited
16 liability company entitled to vote on the
17 appraisal event, excluding any such interests
18 acquired pursuant to an offer for all interests
19 having voting rights, if the offer was made
20 within one (1) year before the appraisal event
21 for consideration of the same kind and of a value
22 equal to or less than that paid in connection
23 with the appraisal event, or

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

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

20 (1) employment, consulting, retirement or similar
21 benefits established separately and not as part,
22 or in contemplation, of the appraisal event,
23 (2) employment, consulting, retirement or similar
24 benefits established in contemplation, or as

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

6 (3) in the case of a manager of the limited liability
7 company who will, during or as the result of the
8 appraisal event, become a manager, general
9 partner or director of the surviving or converted
10 entity or one of its affiliates, those rights and
11 benefits as a manager, general partner or
12 director which are provided on the same basis as
13 those afforded by the surviving or converted
14 entity generally to other managers, general
15 partners or directors of the surviving or
16 converted entity or its affiliate; and

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

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

13 SECTION 2. This act shall become effective November 1, 2017.

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15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL AND
16 ENVIRONMENTAL, dated 02/28/2017 - DO PASS.
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