

SENATE BILL NO. 2223

Introduced by

Senators Nelson, Armstrong, Sorvaag

Representatives M. Johnson, Klemin, Schneider

1 A BILL for an Act to create and enact section 10-32.1-30.1; to amend and reenact subsection 2
2 of section 10-32.1-15, subsection 1 of section 10-32.1-30, subsection 2 of section 10-32.1-39,
3 sections 10-32.1-45, 10-32.1-54, 45-10.2-64, and 45-17-04 of the North Dakota Century Code,
4 relating to limited liability company distributions and management and partnership transferable
5 interests.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 2 of section 10-32.1-15 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 2. The obligations of a limited liability company and its members to a person in the
10 capacity of the person as a transferee or dissociated member are governed by the
11 operating agreement. Subject only to any court order issued under ~~subdivision b of~~
12 ~~subsection 2 of~~ section 10-32.1-45, to effectuate a charging order, an amendment to
13 the operating agreement made after a person becomes a transferee or dissociated
14 member is effective with regard to any debt, obligation, or other liability of the limited
15 liability company or its members to the person in the capacity of the person as a
16 transferee or dissociated member.

17 **SECTION 2. AMENDMENT.** Subsection 1 of section 10-32.1-30 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 1. Subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section
20 10-32.1-05 and unless otherwise provided in the articles of organization or in an
21 operating agreement, any distributions among members and dissociated members
22 made by a limited liability company before its dissolution and winding up must be in
23 equal shares among members and dissociated proportion to the value of the
24 contributions of the members, except to the extent necessary to comply with any

1 transfer effective under section 10-32.1-44 and any charging order in effect under
2 section 10-32.1-45.

3 **SECTION 3.** Section 10-32.1-30.1 of the North Dakota Century Code is created and
4 enacted as follows:

5 **10-32.1-30.1. Sharing of profits and loss.**

6 Unless otherwise provided in the articles of organization, or in an operating agreement, the
7 profits and losses of a limited liability company must be allocated among the members and
8 among classes and series of members in proportion to the value of the contributions of the
9 members.

10 **SECTION 4. AMENDMENT.** Subsection 2 of section 10-32.1-39 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 2. In a member-managed limited liability company, the following rules apply:
- 13 a. The management and conduct of the company are vested in the members.
 - 14 b. ~~Each member has equal rights in the management and conduct of the activities~~
15 ~~of the company~~Unless otherwise provided in the articles of organization or in an
16 operating agreement, each member possesses voting power in the management
17 and conduct of the activities of the company in proportion to the interest of the
18 member in distributions of the limited liability company before dissolution and
19 winding up.
 - 20 c. A difference arising among members as to a matter in the ordinary course of the
21 activities of the company may be decided by a majority of the voting power of the
22 transferable interest of the members.
 - 23 d. An act outside the ordinary course of the activities of the company may be
24 undertaken only with the consent of all members.
 - 25 e. The operating agreement may be amended only with the consent of all members.

26 **SECTION 5. AMENDMENT.** Section 10-32.1-45 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **10-32.1-45. Charging order.**

29 1. On application by a judgment creditor of a member or transferee and following notice
30 to the limited liability company of the application, a court may enter a charging order

1 against the transferable interest of the judgment debtor for the unsatisfied amount of
2 the judgment.

3 2. A charging order constitutes a lien on the transferable interest of a judgment debtor
4 and requires the limited liability company to pay over to the person to which the
5 charging order was issued any distribution that would otherwise be paid to the
6 judgment debtor.

7 ~~2.3.~~ ~~To the extent necessary to effectuate the collection of distributions pursuant to a~~
8 ~~charging order in effect under subsection 1, the court may:~~

9 a. ~~Appoint a receiver of the distributions subject to the charging order, with the~~
10 ~~power to make all inquiries the judgment debtor might have made; and~~

11 b. ~~Make all other orders necessary to give effect to the charging order.~~

12 ~~3.~~ ~~Upon a showing that distributions under a charging order will not pay the judgment~~
13 ~~debt within a reasonable time, then the court may foreclose the lien and order the sale~~
14 ~~of the transferable interest. The purchaser at the foreclosure sale obtains only the~~
15 ~~transferable interest, does not thereby become a member, and is subject to section~~
16 ~~10-32.1-44.~~

17 ~~4.~~ ~~At any time before foreclosure under subsection 3, the~~The member or transferee
18 whose transferable interest is subject to a charging order ~~under subsection 1~~ may
19 extinguish the charging order by satisfying the judgment and filing a certified copy of
20 the satisfaction with the court that issued the charging order.

21 ~~5.4.~~ At any time before ~~foreclosure~~extinguishment under subsection 3, a limited liability
22 company or one or more members whose transferable interests are not subject to the
23 charging order may pay to the judgment creditor the full amount due under the
24 judgment and thereby succeed to the rights of the judgment creditor, including the
25 charging order.

26 ~~6.5.~~ This chapter does not deprive any member or transferee of the benefit of any
27 exemption laws applicable to the transferable interest of the member or transferee.

28 ~~7.6.~~ This section provides the exclusive remedy by which a person seeking to enforce a
29 judgment against a member or transferee may, in the capacity of judgment creditor,
30 satisfy the judgment from the transferable interest of the judgment debtor.

- 1 a. No other remedy, including foreclosure of the transferable interest or a court
2 order for directions, accounts, and inquiries that the debtor member might have
3 made, is available to the judgment creditor that is attempting to satisfy the
4 judgment out of the judgment debtor's interest in the limited liability company.
5 b. No creditor of a member or transferee has any right to obtain possession of or
6 otherwise exercise legal or equitable remedies with respect to a property of the
7 company.
8 7. This section applies to single member limited liability companies and limited liability
9 companies with more than one member.

10 **SECTION 6. AMENDMENT.** Section 10-32.1-54 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **10-32.1-54. Distribution of assets in winding up limited liability activities of the**
13 **company.**

- 14 1. In winding up its activities, a limited liability company must apply its assets to
15 discharge its obligations to creditors, including members that are creditors.
16 2. After a limited liability company complies with subsection 1, any surplus must be
17 distributed in the following order, subject to any charging order in effect under section
18 10-32.1-45 and unless otherwise provided in the articles of organization or an
19 operating agreement:
20 a. To each person owning a transferable interest that reflects contributions made by
21 a member and not previously returned, an amount equal to the value of the
22 unreturned contributions; and
23 b. ~~In equal shares among~~ proportion to the value of the contributions of members
24 and dissociated members, except to the extent necessary to comply with any
25 transfer effective under section 10-32.1-44.
26 3. If a limited liability company does not have sufficient surplus to comply with
27 subdivision a of subsection 2, then any surplus must be distributed among the owners
28 of transferable interests in proportion to the value of their respective unreturned
29 contributions.

- 1 4. All distributions made under subsections 2 and 3 must be paid in money unless
2 otherwise provided in the articles of organization in an operating agreement, or by the
3 unanimous consent of the voting members.

4 **SECTION 7. AMENDMENT.** Section 45-10.2-64 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **45-10.2-64. (703) ~~Rights of a creditor of partner or transferee~~Charging order.**

- 7 1. On application ~~to a court of competent jurisdiction by any~~by a judgment creditor of a
8 partner or of a partner's transferee, ~~the court may charge~~and following notice to the
9 partnership of the application, a court of competent jurisdiction may enter a charging
10 order against the transferable interest of the judgment debtor ~~with payment of the~~for
11 the unsatisfied amount of the judgment ~~with interest.~~

12 ~~a. To the extent so charged, the judgment creditor has only the rights of a~~
13 ~~transferee.~~

14 ~~b. The court may appoint a receiver of the share of the distributions due or to~~
15 ~~become due to the judgment debtor in respect of the partnership and make all~~
16 ~~other orders, directions, accounts, and inquiries the judgment debtor might have~~
17 ~~made or which the circumstances of the case may require to give effect to the~~
18 ~~charging order.~~

19 ~~c.~~

20 2. A charging order constitutes a lien on the transferable interest of the judgment debtor
21 and requires the partnership to pay to the person to which the charging order was
22 issued any distribution that otherwise would be paid to the judgment debtor.

23 3. The partner or transferee having a transferable interest subject to a charging order
24 may extinguish the charging order by satisfying the judgment and filing a certified copy
25 of the satisfaction with the court that issued the charging order.

26 4. A partnership or partner having any transferable interest not subject to the charging
27 order may pay the full amount due under the judgment to the judgment creditor and
28 succeed to the rights of the judgment creditor, including the charging order.

29 ~~2.5.~~ This chapter does not deprive any partner or transferee of the benefit of any
30 exemption laws applicable to the transferable interest of the partner or transferee.

1 ~~3.6.~~ This section provides the exclusive remedy by which a person seeking to enforce a
2 judgment ~~creditor of~~against a partner or transferee may satisfy, in the capacity of a
3 judgment ~~with request to~~creditor, the judgment from the transferable interest of the
4 judgment debtor.

5 a. No other remedy, including foreclosure of the transferable interest or a court
6 order for directions, accounts, and inquiries the debtor partner may have made, is
7 available to the judgment creditor attempting to satisfy the judgment from the
8 judgment debtor's interest in the partnership.

9 b. No creditor of a partner or transferee has a right to obtain possession or
10 otherwise exercise legal or equitable remedies with respect to property of the
11 partnership.

12 **SECTION 8. AMENDMENT.** Section 45-17-04 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **45-17-04. (504) Partner's transferable interest subject to charging order.**

- 15 1. On application by a judgment creditor of a partner or of a partner's transferee and
16 following notice to the partnership of such application, a court having jurisdiction may
17 ~~charge~~enter a charging order against the transferable interest of the judgment debtor
18 ~~to satisfy for the unsatisfied amount of~~ the judgment. ~~The court may appoint a receiver~~
19 ~~of the share of the distributions due or to become due to the judgment debtor in~~
20 ~~respect of the partnership and make all other orders, directions, accounts, and~~
21 ~~inquiries the judgment debtor might have made or which the circumstances of the~~
22 ~~case may require.~~
- 23 2. A charging order constitutes a lien on the ~~judgment debtor's~~ transferable interest ~~in of a~~
24 judgment debtor and requires the partnership to pay over to the person to which the
25 charging order was issued any distribution that would otherwise be paid to the
26 judgment debtor. ~~The court may order a foreclosure of the interest subject to the~~
27 ~~charging order at any time. The purchaser at the foreclosure sale has the rights of a~~
28 ~~transferee.~~
- 29 3. ~~At any time before foreclosure, an interest charged may be redeemed:~~
- 30 a. ~~By the judgment debtor;~~

- 1 b. ~~With property other than partnership property, by one or more of the other-~~
2 ~~partners; or~~
- 3 e. ~~With partnership property, by one or more of the other partners with the consent-~~
4 ~~of all of the partners whose interests are not so charged. The partner or transferee~~
5 ~~whose transferable interest is subject to a charging order may extinguish the~~
6 ~~charging order by satisfying the judgment and filing a certified copy of the~~
7 ~~satisfaction with the court that issued the order.~~
- 8 4. ~~At any time before extinguishment under subsection 3, a partnership or one or more~~
9 ~~partners whose transferable interest are not subject to the charging order may pay the~~
10 ~~full amount due under the judgment to the judgment creditor and succeed to the rights~~
11 ~~of the judgment creditor, including the charging order.~~
- 12 5. Chapters 45-13 through 45-21 do not deprive a partner of a right under exemption
13 laws with respect to the partner's interest in the partnership.
- 14 5-6. This section provides the exclusive remedy by which a person seeking to enforce a
15 judgment creditor of against a partner or partner's transferee may satisfy a, in the
16 capacity of a judgment creditor, satisfy the judgment from the transferable interest
17 of the judgment debtor's transferable interest in the partnership debtor.
- 18 a. No other remedy, including foreclosure of the transferable interest or a court
19 order for directions, accounts, and inquiries the debtor partner might have made,
20 is available to the judgment creditor attempting to satisfy the judgment out of the
21 judgment debtor's interest in the partnership.
- 22 b. No creditor of a partner or transferee has any right to obtain possession of or
23 otherwise exercise legal or equitable remedies to a property of the partnership.