Prepared by the Legislative Council staff for
Senator Nelson
March 24, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2223

That the House recede from its amendments as printed on pages 847-849 of the Senate Journal and pages 1011-1014 of the House Journal and that Engrossed Senate Bill No. 2223 be amended as follows:

Page 1, line 1, after "10-32.1-30.1" insert "of the North Dakota Century Code, relating to sharing of profits and losses"

Page 1, line 2, remove "subsection 1 of"

Page 1, line 2, after the third comma insert "and"

Page 1, remove lines 17 through 24

Page 2, replace lines 1 and 2 with:

"**SECTION 2. AMENDMENT.** Section 10-32.1-30 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-30. Sharing of and right to distributions before dissolution.

1. ~~Subject~~Except as provided in subsection 5 and subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05, any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45.

2. A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. The dissociation of a person does not entitle the person to a distribution.

3. A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in ~~subsection 3 of~~ section 10-32.1-54, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the share of distributions of the person.

4. If a member or transferee becomes entitled to receive a distribution, then the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

5. Notwithstanding subsection 1, subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05 and unless otherwise provided in the articles of organization or in an operating agreement, for a limited liability company created after July 31, 2017, any distributions among members and dissociated members made by a limited liability

company before its dissolution and winding up must be in proportion to the value of the contributions of the members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45."

Page 2, line 7, after "company" insert "created after July 31, 2017,"

Page 2, line 12, overstrike "In" and insert immediately thereafter:

a. Except as provided in subdivision b, in"

Page 2, line 13, overstrike "a." and insert immediately thereafter "(1)"

Page 2, line 14, overstrike "b." and insert immediately thereafter "(2)"

Page 2, line 14, remove the overstrike over "~~Each member has equal rights in the management and conduct of the activities~~"

Page 2, line 15, remove the overstrike over "~~of the company~~"

Page 2, line 15, remove "Unless otherwise provided in the articles of organization or in an"

Page 2, remove lines 16 through 18

Page 2, line 19, remove "winding up"

Page 2, line 20, overstrike "c." and insert immediately thereafter "(3)"

Page 2, line 21, remove "voting power of the"

Page 2, line 22, remove "transferable interest of the"

Page 2, line 23, overstrike "d." and insert immediately thereafter "(4)"

Page 2, line 25, overstrike "e." and insert immediately thereafter "(5)"

Page 2, after line 25, insert:

"b. Notwithstanding subdivision a, in a member-managed limited liability company created after July 31, 2017, the following rules apply:

(1) The management and conduct of the company are vested in the members.

(2) Unless otherwise provided in the articles of organization or in an operating agreement, each member possesses voting power in the management and conduct of the activities of the company in proportion to the interest of the member in distributions of the limited liability company before dissolution and winding up.

(3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the voting power of the transferable interest of the members.

(4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

(5) The operating agreement may be amended only with the consent of all members."

Page 4, line 14, overstrike "In" and insert immediately thereafter "Except as provided in subsection 5, in"

Page 4, line 14, overstrike "must" and insert immediately thereafter "shall"

Page 4, line 18, remove "and unless otherwise provided in the articles of organization or an"

Page 4, line 19, remove "operating agreement"

Page 4, line 23, remove the overstrike over "~~equal shares among~~"

Page 4, line 23, remove "proportion to the value of the contributions of"

Page 5, line 1, remove "unless"

Page 5, remove line 2

Page 5, line 3, remove "unanimous consent of the voting members"

Page 5, after line 3, insert:

"5. a. Notwithstanding subsections 1 through 4, in winding up its activities a limited liability company created after July 31, 2017, shall apply its assets to discharge its obligations to creditors, including members that are creditors.

b. After a limited liability company complies with subdivision a, any surplus must be distributed in the following order, subject to any charging order in effect under section 10-32.1-45 and unless otherwise provided in the articles of organization or an operating agreement:

(1) To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) In proportion to the value of the contributions of members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44.

c. If a limited liability company does not have sufficient surplus to comply with paragraph 1 of subdivision b, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

d. All distributions made under subdivisions a and b must be paid in money unless otherwise provided in the articles of organization or in an operating agreement, or by the unanimous consent of the voting members."

Renumber accordingly