

**2017 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2223**

# 2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2223  
1/25/2017  
Job Number 27349

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Eva Lubelt*

## Explanation or reason for introduction of bill/resolution:

Relating to limited liability company distributions

## Minutes:

Attachments 1-2

**Chairman Klein:** Called the committee back to order.

**Senator Nelson:** Introduced the bill and said that the bill needed a little tweaking. Amendment, see attachment #1. (:08-1:55)

**William L. Guy III:** Written testimony, see attachment #2. (2:08-6:41)

**Senator Roers:** The amendments here are what you are referring to in these four bullet points?

**William L. Guy III:** They are but item c was not included by the legislative council in the amendments that were handed out but I am not sure why. In my testimony you can delete item 8-c on page 2 of my testimony.

**Senator Casper:** Asked about the charging order and if this affects the way the person holding that judgement goes after those units if they want to settle the judgement.

**William L. Guy III:** Yes, the charging order allows the judgement holder to essentially sit outside of the LLC and wait for distributions to come to that member and then they can attach the distributions as they occur but cannot attach the membership interest itself.

**Al Jaeger, Secretary of State:** In support of the bill. Said what has been drafted is consistent with how his office does it. (9:30-10:45)

**Chairman Klein:** Closed the hearing.

Senator Roers moved to adopt the amendment, 17.0777.01001.

Senator Burckhard seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-1

Senator Casper moved a do pass as amended.

Senator Roers seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-1

Senator Burckhard will carry the bill.

January 25, 2017

1/25/17

1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2223

Page 1, line 3, after "10-32.1-54" insert ", 45-10.2-64"

Page 2, line 16, after "power" insert "in the management and conduct of the activities of the company"

Page 3, line 19, overstrike "foreclosure" and insert immediately thereafter "extinguishment"

Page 4, after line 28, insert:

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

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

1. ~~On application to a court of competent jurisdiction by any~~by a judgment creditor of a partner or of a partner's transferee, the court may charge and following notice to the partnership of the application, a court of competent jurisdiction may enter a charging order against the transferable interest of the judgment debtor with payment of the~~for the~~ unsatisfied amount of the judgment with interest.
  - a. ~~To the extent so charged, the judgment creditor has only the rights of a transferee.~~
  - b. ~~The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.~~
  - c.
2. A charging order constitutes a lien on the transferable interest of the judgment debtor and requires the partnership to pay to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.
3. The partner or transferee having a transferable interest subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
4. A partnership or partner having any transferable interest not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.



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

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

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

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

Page 5, line 25, replace "A" with "At any time before extinguishment under subsection 3, a"

Renumber accordingly

CA  
7/25/17  
2 of 2

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2223**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 17.0777.01001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Roers Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	AB				

Total (Yes) 6 No 0

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2223**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 17.0777.01001

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Casper Seconded By Senator Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	AB				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Burckhard

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**SB 2223: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2223 was placed on the Sixth order on the calendar.

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  - a. ~~To the extent so charged, the judgment creditor has only the rights of a transferee.~~
  - b. ~~The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.~~
  - c.
2. A charging order constitutes a lien on the transferable interest of the judgment debtor and requires the partnership to pay to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.
3. The partner or transferee having a transferable interest subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
4. A partnership or partner having any transferable interest not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.
- 2.5. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.
- 3.6. This section provides the exclusive remedy by which a person seeking to enforce a judgment creditor of against a partner or transferee may satisfy,

in the capacity of a judgment with request to creditor, the judgment from the transferable interest of the judgment debtor.

- a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner may have made, is available to the judgment creditor attempting to satisfy the judgment from the judgment debtor's interest in the partnership.
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Page 5, line 25, replace "A" with "At any time before extinguishment under subsection 3, a"

Renumber accordingly



**2017 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2223**

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2223  
3/6/2017  
Job #28740

☐ Subcommittee  
☐ Conference Committee

*Re Mae Kasper*

### Explanation or reason for introduction of bill/resolution:

Limited liability company distributions and management and partnership transferable interests.

### Minutes:

Attachment 1

**Chairman Keiser:** Opens the hearing of SB 2223.

**Senator Nelson, Sponsor~ District 21-Fargo:** Introduces the bill. There are three things to be fixed.

**Rep Bosch:** Can you talk about the three things this bill does?

### Sen Nelson:

If there is an uneven distribution of who owns things, it will make it so it is proportional to how much you own. If you own 90% of it, you have 90% of the votes. It will be further explained by the next speaker.

**Tyler Gludt, Attorney~Represents Bill Guy:** (Attachment 1) When an LLC or limited partnership or a general partnership is formed, we try to get it in writing. Once it's in writing, this act gives the members of those entities leeway on how they want to allocate profits, losses, and distributions among the members of the entity. If there is no document, it reverts back to what is in statute. What we are talking about are default rules when there is a lack of an operating agreement. No matter what an individual may have contributed to an LLC, Section 10-32.1 said that voting rights are equal. That is what we are trying to change. These changes address voting rights, distributions, and allocations of profits and losses.

(6:10)

Continued reading sections and describing bill.

(9:00)

**Rep Kasper:** You have a piece of property that is owned by three LLCs, 80%, 10% & 10%. Judgment is entered into requiring the 80% owner to pay the 10% owners some money and it has gone to court and it is judged to do that. In light of this bill, what happens?

**Tyler Gludt:** The judgment would be against the LLC and not an individual member of the LLC. What this act is addressing is a judgment against a member of an LLC and their interest in the LLC.

(10:20)

**Rep Kasper:** The LLC owns the interest, now we are piercing the LLC and going to the member who owns the LLC?

**Tyler Gludt:** If there is a judgment against that LLC, the LLC as an entity would be liable if there is a judgment in favor of the two other creditors.

**Rep Kasper:** Let's say it is real estate which is an income producing piece of property. Can the minority LLC force the majority owner to sell or liquidate their LLC interest to satisfy a judgment?

**Tyler Gludt:** That would be under a separate agreement that those three entities have.

**Rep Kasper:** What if there is no agreement?

**Tyler Gludt:** What I am discussing here would not address that issue.

**Rep Kasper:** No agreement, no deal.

**Tyler Gludt:** I can't say how a court may handle that situation. As lawyers, we say it "depends."

(12:60)

**Tyler Gludt:** Continues explaining bill. A charging order in Section 5 is the sole remedy of a judgment creditor against membership interest of the debtor member. No other remedy is available. Now we are limiting it even further. The judgment creditor will not be able to foreclose on that interest which is a protection against the LLC and the other members.

(14:45)

**Chairman Keiser:** Is this legislation prospective? If I have an LLC formed under the old law, does it retroactively affect future decisions?

**Tyler Gludt:** I did not discuss that with Mr. Guy. However, based off of how we have applied the application of our new LLC act, I would assume that any entity that does have an operating agreement in place, this new bill would not affect those agreements. A partnership that doesn't have an agreement, I can't say how the passage of this bill would affect something prior to the passage of this bill.

**Chairman Keiser:** We may want to get an answer to that.

**Tyler Gludt:** That's an excellent question, we will have to review that.

**Chairman Keiser:** Something to think about, just pass legislation that says in the future the Articles of Incorporation have to address this.



**Rep Lefor:** Isn't this default language if it is in the operating agreement, it is taken care of. This is fallback language in case it is not in an operating agreement.

**Tyler Gludt:** Correct. Our statute acts as their operating agreement.

**Al Jaeger ~ Secretary of State:** From the administrative standpoint, this doesn't impact my administrative duties related to limited liability companies. To the last question, you don't need a lawyer to create an LLC. If a lawyer is involved, they would address the problems.

**Rep Becker:** In order to recognize an LLC, they need some form of articles of organization and a membership operating agreement. Don't you require those to even recognize them?

**Al Jaeger:** My understanding is you don't have to have all of that. All you get from us is the Articles of Organization. We don't ask for bylaws or operating agreements. We don't care as a filing office what your agreements are.

**Tyler Gludt:** Everything Al Jaeger said is correct. The basic Articles of Organization can be printed off of the Secretary of States website. You can do your own with additional provisions as well.

**Chairman Keiser:** What is happening in the courts now? The current law is clear. If it is not defined in the Articles of Organization, if there is an issue it will go on even shares based on the number of people.

**Tyler Gludt:** To my knowledge this issue hasn't been litigated in North Dakota.

**Chairman Keiser:** They aren't ruling in favor of the contribution rate vs. even distribution?

**Tyler Gludt:** I haven't seen it addressed by a court.

**Opposition:** None

**Neutral:** None

**Chairman Keiser:** Closed the hearing.

**Rep Bosch:** I would like clarification on your question before we vote.

**Rep Becker:** I agree with that. We need to know what is happening retrospectively.

**Rep Kasper:** I would also like to know if we put an effective date of this language as August 1, 2017, that would mean anything prior to that date would still be under the current law?

**Chairman Keiser:** The alternative is to say the Articles of Organization must contain certain items to address these issues. That makes more sense than changing the rules of the game. Ignorance is not a defense.

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2223

3/8/2017

28889

- ☐ Subcommittee  
☐ Conference Committee

*Ellen Letang*

### Explanation or reason for introduction of bill/resolution:

Limited liability company distributions and management and partnership transferable interests.

### Minutes:

Attachment 1

**Chairman Keiser:** Reopens the hearing of SB 2223.

**Chairman Keiser:** Limited liability draft.

**Tyler Gludt ~ Attorney~Represents Bill Guy:** Attachment 1.

3:20

**Chairman Keiser:** It doesn't say that?

**Gludt:** Correct, I had little to do with hands on drafting this bill.

**Chairman Keiser:** Did Bill Guy give you any suggestions on the language to clarify that is either an effect date?

**Gludt:** I believe that Bill suggested that the effect date would be Aug 1, 2017.

**Chairman Keiser:** That for the bill but page 2, lines 15-19, we are giving the power for the change but it doesn't say for prospective articles of organizations. It implies to all.

**Gludt:** Correct. The LLC did enter into an offering agreement or trustee issues in their articles of organizations, whether it was pre or post, bill taking effect, those provisions & agreements would still stand.

**Chairman Keiser:** This is default; they didn't say it specifically in their articles of organization.



**Gludt:** That's correct. Am I missing something? If we don't want our distributions to be in proportion to our contributions, we want equal distributions no matter what your contributions were. They contracted that in their operating agreement today, it still goes into effect, that doesn't affect their operating agreement.

**Chairman Keiser:** I agree with that. What I'm say, I have 2 firms, one that opens after August 1, 2017 & one that is currently in operation. Will both firms have the same application for distribution in 3 years?

**Gludt:** No, the firm that doesn't have an operating agreement, form to prior to August 1, 2017, the rules that they stand today, would apply to that LLC.

**Rep Becker:** The question of what the businesses, the rules they play by, are whatever is current in century code. I'm not convinced that consistent with how we run our state laws but according to what is in statute. I'm not convinced that our interpretations today are adequate for how the law will be applied.

**Gludt:** I can't think of a specific situation where that may apply.

**Rep Becker:** It seems to me that we need to be sure what we are saying & we are not being clear in this bill.

**Rep Lefor:** Basically the first order is the ownership agreement, correct?

**Gludt:** Yes, that's correct.

**Rep Lefor:** If the originating members don't do their due diligences & don't incorporate that into their organizing agreement, then this become the default. So a lawsuit in 2019 would go to this new law. I'm an LLC formed in 2014 & we go to this default. There is a lawsuit, is it based on 2014 or the new proposed law?

**Gludt:** I would assume the way we are intending to enact this bill, that the law stands today & the law that they organized under with these people, would have to govern the LLC.

**Chairman Keiser:** I'm not an attorney but I'm going to have to disagree with your interpretation. The formation is one thing but the disillusion is a separate event. As this law is written & I'm after the original bill pass but before this bill is passed. I formed in there, we didn't have that in the articles of organization. So, 2019 an issue arises & we want to implement this distribution, the court will look & say, you weren't dissolving in 2017, 2016 but you are today. The current laws says, if you dissolve today, this is what happens. They don't take you back.

**Gludt:** I would have to agree; the court will interpret the law as it stands today.

**Chairman Keiser:** What we are suggesting is one way to address it is to put into language that this law only applies to companies LLC's formed after August 1, 2017. Then it takes you back to the old law for those that are under currently on the old one, that's what we need.

**Gludt:** I would agree with that.

**Rep Becker:** Are we aware of what the minimum requirements for articles of organization as required by the Secretary of State?

**Gludt:** The minimal requirements would be the state form for articles of organization.

**Rep Becker:** What is your opinion? What if one of the requirements was that there will be 3 options in all areas as equal to the contribution of investment, per members or as otherwise defined in the articles of organization? What are your thoughts about handling this concern in that manner?

**Gludt:** I think Secretary of State, when most people go in to form a LLC, they haven't looked or thought that far ahead. My recommendation, upon the formation of an entity, they would have to choose how they are going to distribute your profits & losses.

**Chairman Keiser:** When they do that they probably have no knowledge of this law.

**Gludt:** I would agree with that.

**Chairman Keiser:** We are allowing them to do that even though they don't know what is happening.

**Rep Ruby:** I heard under a LLC, if you don't have a buy/sell agreement & one of them passes away, that ownership can be retained by the other owner or owners. Is that true?

**Gludt:** I believe you are correct. The death of a member of a LLC does not cause the disillusion of a LLC.

**Rep Ruby:** But it doesn't necessarily go into the estate court for that person either, unless there was a buy/sell agreement.

**Gludt:** I don't know if it would require a buy/self-funded agreement, most operating agreements address the issue of a death of a member.

**Rep Ruby:** That's with an operating agreement but if somebody entered unknowingly into a LLC & didn't know that was a provision & it wasn't there; could it potentially not have their dependent receive a portion of that ownership?

**Gludt:** I believe without any other agreement involved, that membership would pass into the estate of the deceased, correct?

**Rep Lefor:** This fixes a loopholes. What's your professional opinion be in terms of us putting a date on an amendment that says any LLC formed after Aug 1, 2017 or would you just leave it out & why?

**Gludt:** I think that per conversation with Bill Guy, that's the intent.



**Rep Laning:** Could a lot of this be covered by a clause that it says it is not retroactive?

**Chairman Keiser:** LC liked it the other way but you could.

**Rep C Johnson:** What if we have any distributions apply according to laws that were in effect at the time of incorporation?

**Chairman Keiser:** That would also work.

**Chairman Keiser:** Further questions?

**Rep Becker:** I think that most people who formalize this business entity, make it an LLC, have a general understanding. If some situation needs further clarification, any boxed that is checked can always be changed by meeting of the members. The problem of going in this direction, we have in law, according to member equally.

There are situations where by default that's not a fair situation because the understanding was going to be according to proportion. More often than not it's according to proportion, therefore make things right more often but it won't make things right all the time. There are situations. My concern is that we are switching one that's not real great to one that's slightly better.

I'm still interested in amending the bill to what was previously discussed with the requirement. I want to throw that out there.

**Rep Bosch:** Perhaps if we can't get the Secretary of State to agree on the checkbox, at least a footnote on the bottom.

**Rep Kasper:** The Secretary of State could include this part of the law, this statute, in the forms that are emailed or mailed that are forming LLC with a cover letter. This would at least alert them.

**Rep Becker:** I would be happy to work on an amendment.

**Chairman Keiser:** We will carry this bill over.

**Rep Boschee:** In dealing with real-estate, they assume that it's going to their heir but often times it will stay in the LLC unless it's defined differently.

**Chairman Keiser:** Closes the hearing on SB 2223.

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2223  
3/14/2017  
29125

☐ Subcommittee  
☐ Conference Committee

*Ellen Letang*

**Explanation or reason for introduction of bill/resolution:**

**Minutes:**

Attachment 1

**Chairman Keiser:** Reopens the hearing of SB 2223. **Attachment 1** was passed out.

The 1<sup>st</sup> minute, the recording was inaudible.

**Rep Becker:** The direction of the amendment was simply to say let's get rid of the aspect of a default because if someone doesn't claim which way they are going. Let's have it be one of the requirements for the articles of organization required by the Secretary of State on how you are going to be divvying everything up.

Those options could be:

1. The way it's currently is in default which is splitting it up equally amongst the members.
2. According to contribution.
3. As otherwise determined in the articles of organization.

Never the less, it would be in the articles of organization. There would be no default position. It seemed that that would be the only way to take care of anyone one falling through the cracks.

The amendment strikes out a lot of language & in the gray box that is required by the Secretary of State in the articles of organization. Number 3 says, an additional requirement is the method of determining allocation of profits & losses, distribution & the voting powers. Those are the areas that when you start breaking down the original bill, it addressed those areas.

So, sections 2, 3, 4 & 6 would all be able to be stricken & 5, 7 & 8 are the ones that deal with not specifically with the dissolution, distribution, losses, distributions & voting powers.

**Chairman Keiser:** When you talked with Legislative Council, this legislation would become effective on August 1, 2017. Do we need to say that this is prospective for LLC's formed after that date or not?

**Rep Becker:** We didn't specifically discuss that. The thoughts were that if these are requirements are preforming of LLC's, it would be only for those formed from the point of the enactment of this law.

**Chairman Keiser:** There seems to be a little confusion that we could easily straighten out by saying this is effective for LLC's formed after August 1. Then there is no question that the others stay in the grandfathered status.

**Rep Becker:** Are you suggesting that if we were to adopt this amendment we would further amend, all in one?

**Chairman Keiser:** Correct.

**Rep Becker:** Moves the amendment

**Rep Beadle:** Second.

**Chairman Keiser:** Further questions?

**Voice vote ~ motion carried.**

**Chairman Keiser:** What are the wishes of the committee?

**Rep Bosch:** Earlier we had said that we would check with the Secretary of State before we would move forward? Is that still part of the plan?

**Chairman Keiser:** We will hold the bill.



# 2017 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2223  
3/15/2017  
29213

- ☐ Subcommittee  
☐ Conference Committee

*Ellen Letang*

### Explanation or reason for introduction of bill/resolution:

Limited liability company distributions and management and partnership transferable interests.

### Minutes:

Attachment 1

**Chairman Keiser:** Reopens the hearing of SB 2223.

**Rep Becker:** Attachment 1. It was best to put it in that last section rather than the entire section. The amendment before you clarifies that this is a new requirement that would start August 1.

**Rep Becker:** Moves the amendment.

**Rep Lefor:** Second.

**Chairman Keiser:** Further discussion?

**Voice vote ~ Motion carries.**

**Rep Becker:** We looked at this on Monday & Rep Bosch indicated that we were wanting to get in touch with the Secretary of State.

**Chairman Keiser:** Closes the committee work on SB 2223.

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2223  
3/15/2017  
29254

☐ Subcommittee  
☐ Conference Committee

*Ellen LeTang*

### Explanation or reason for introduction of bill/resolution:

Limited liability company distributions and management and partnership transferable interests.

### Minutes:

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**Chairman Keiser:** Reopens the hearing of SB 2223.

**Chairman Keiser:** On page 3 of the handout from yesterday, the christmas tree version, added "would be a requirement with the application for registration". That is the issue.

**Al Jeager ~ Secretary of State:** I hope you don't adopt the amendment. One of the things we have done is tried to do was have the procedures for all our business entities uniform. What is different in all those bill is what is unique to a partnership & a limited liability company.

This particular requirement, by adding this language, is none of our business entities are required to make that kind of requirement. You are not required to file your by-laws with us. Here you are saying, you are putting a requirement on the filer that they have to make a decision about their business operations, that is unlike any of our other filings.

Two ramifications, the office & public. To form an LLC is simple. The more complex it becomes, hopefully people will have articles of organization with an attorney. Some companies of LLC's forms can be filled out a form, online site. With this type of thing, not being a requirement of any other entity, you exclude options for the limited liability company.

If you put a check box in law & it puts a burden on us because too many people come in & don't know what they are doing. What does this mean, the method to determine of allocation of profits?

**Chairman Keiser:** Many times companies go to an attorney in advance & the attorney sits them down & they determine the articles of organization. This is just the default decision.



**Jeager:** You are eliminating other things. You are telling them that they have to file & make decisions upfront. When people walk into our office, they will do everything but ask, "what is this?". We are placed in a position where we can't offer legal advice.

A suggest was made to just have some boxes. It isn't simple. The default now is that it's even for everybody regardless of your ownership percentage. The proposed default was that if there is nothing else, it's based on your ownership share. You are saying that you have to make a choice, we just can't have 2 boxes because there are too many scenarios.

This has to be initiated text verbiage coming initially in. My staff has to look at & make a decision, have they adequately provided the method for determining the allocation of profit & losses, distribution & voting members. We are a filing office. We are concerned from the standpoint of our office that we are going to be put into an awkward position.

Another thing that comes to mind is that 2 or 3 sessions ago, there was a uniform limited liability company that was approved by the legislature. We suspect that this particular provision is not part of the uniform language. It would be a departure, nationwide, to have something like this, because it was not part of the uniform law commission recommendations that this body adopted. This would make a little change.

There was a question asked that had to do with the law. What I've learned, any LLC that is organized prior to August 1, that default is under what it was when they were established. The default in the bill without the amendments, that would be the default going forward from August 1.

The other thing that we became concerned about is that, you have this requirement agreement upfront. Two years down the road, the members of the LLC, decide they are going to do something different. Ownership changes, are they going to have to file amendments with us? I would suspect, even with a simple change, no one will remember to file the new changes with us.

What does this amendment really accomplish just because you required it upfront? What happens with everything that follows in the future? Do we really want those filings because when the corporation changes their by-laws, we don't care, but the name still exists?

We hope that everybody would have it figured out ahead of time for the default. Where this came about, is it really fair? It's based on the ownership. We just encourage you to not pass the amendment & leave the bill alone.

**14:50**

**Rep Ruby:** As far as the rest of the bill, do you believe it's necessary or beneficial to our current statute? Are there any other areas or just the one area?

**Jeager:** What you see redlined is amended. That's the part you need to keep intact the way it came over to you & that's the way it's in the law now.

**Chairman Keiser:** If you look at the colored markup. If you keep the addition found on page 3, the green, you have to take out the other parts because the other parts address this.

**Jeager:** Right. We would like it if it all stayed black the way you received it. Keep in mind that it impacts the entrepreneur. You want him to come in, start his business & now be concerned that down the road, they need to file amendments because upfront something changes.

**Rep Dobervich:** Several times you talked about the burden on the department & staff. I'm wondering, currently if an applicant comes in & their application isn't complete, what does your staff do & how is the time spent with that different?

**Jeager:** When a filing comes in, what we are looking at are the basic things that the law requires. The gray area on page 2 & 3, this is what the law currently required of the marked up bill. When somebody comes in we help them with the basics but they ask us what should we here. We can't advise, which is legal advice, we are not allowed to do.

**Rep Dobervich:** You're a filing list office, if I've left information off, do I fill it out & come back? Is that what is happening now if someone were to leave information off?

**Jeager:** If they came in personally, it's fixed on the spot. If mailed, it's a phone call or letter to fix. Once the business is registered, they can proceed with their organization. It is a step beyond what we do.

**Chairman Keiser:** Committee, you have heard the Secretary of State's concern. We have a couple of options. We can pass this bill & go to conference committee or we can accept the concerns expressed by the Secretary of State & try to address those. We can take similar & simply say, "for organizations after August 1, 2017, the default provision will be the proportional share". We can force them to do it up front. Almost invariably, they ask legal opinion in my business, which I say, "we are not attorneys, we can't give you an opinion".

**Jeager:** When you talk about August 1, I think the law takes care of itself but to have an affirmative statement about the new LLC's, I don't think it changes. That amendment by itself, I think it's beneficial, it's everything else.

**Rep Kasper:** Your contention, we accept the bill the way it came from the senate, not add the amendments that were added? You are ok with adding a date of August 1, 2017 & ongoing, is that right?

**Jeager:** Correct.

**Chairman Keiser:** We have SB 2223 before us as amended, what are your wishes?

**Rep Kasper:** Moves to take the amendment off.

**Rep Ruby:** Second.

**Chairman Keiser:** Further discussion?



**Voice vote ~ Motion carried.**

**Chairman Keiser:** Do we have a further motion?

**Rep Lefor:** Move the amendment.

**Rep Bosch:** Second.

**Chairman Keiser:** Further discussion?

**Voice vote ~ Motion carried.**

**Chairman Keiser:** What are the wishes of the committee?

**Rep Bosch:** Moves a Do Pass as Amended.

**Vice Chairman Sukut:** Second.

**Chairman Keiser:** Further discussion?

**Roll call was take for a Do Pass as Amended on SB 2223 with 13 yes, 0 no, 1 absent & Rep Bosch is the carrier.**

**Secretary of State ~ Al Jaeger:** I want to thank the committee because of the fact that you came & asked us. You might set the policy but we have to administer it. This one would have been a big challenge & it would have impacted main street business people.



Sixty-fifth  
Legislative Assembly  
of North Dakota

**ENGROSSED 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~~  
3 ~~10-32.1-39~~ subsection 2 of section 10-32.1-20, sections 10-32.1-45, ~~10-32.1-54, 45-10.2-64,~~  
4 and 45-17-04 of the North Dakota Century Code, relating to limited liability company  
5 distributions and management and partnership transferable 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

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

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

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

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

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

2. In a member-managed limited liability company, the following rules apply:

a. The management and conduct of the company are vested in the members.

b. Each member has equal rights in the management and conduct of the activities  
of the company 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.

c. 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.

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

e. The operating agreement may be amended only with the consent of all members.

**SECTION 2. AMENDMENT.** Subsection 2 of section 10-32.1-20 of the North Dakota  
Century Code is amended and reenacted as follows:

2. The articles of organization:

a. Must state:

(1) The name of the limited liability company, which must comply with section  
10-32.1-11;



- 1                   (2) With respect to the registered agent:
- 2                   (a) The name of the commercial registered agent of the limited liability
- 3                   company as provided in chapter 10-01.1; or
- 4                   (b) The name and address of a noncommercial registered agent in this
- 5                   state as provided in chapter 10-01.1;
- 6                   (c) The address of the principal executive office;
- 7                   (d) The name and address of each organizer; and
- 8                   (3) The method of determining allocation of profits and losses, distribution, and
- 9                   the voting powers of members.
- 10                  b. May state an effective date of organization, which must not be later than ninety
- 11                  days from the date of filing with the secretary of state.

12                  **SECTION 3. AMENDMENT.** Section 10-32.1-45 of the North Dakota Century Code is

13                  amended and reenacted as follows:

14                  **10-32.1-45. Charging order.**

- 15                  1. On application by a judgment creditor of a member or transferee and following notice
- 16                  to the limited liability company of the application, a court may enter a charging order
- 17                  against the transferable interest of the judgment debtor for the unsatisfied amount of
- 18                  the judgment.
- 19                  2. A charging order constitutes a lien on the transferable interest of a judgment debtor
- 20                  and requires the limited liability company to pay over to the person to which the
- 21                  charging order was issued any distribution that would otherwise be paid to the
- 22                  judgment debtor.
- 23                  ~~2.3.~~ ~~To the extent necessary to effectuate the collection of distributions pursuant to a~~
- 24                  ~~charging order in effect under subsection 1, the court may:~~
- 25                  a. ~~Appoint a receiver of the distributions subject to the charging order, with the~~
- 26                  ~~power to make all inquiries the judgment debtor might have made; and~~
- 27                  b. ~~Make all other orders necessary to give effect to the charging order.~~
- 28                  ~~3.~~ Upon a showing that distributions under a charging order will not pay the judgment
- 29                  ~~debt within a reasonable time, then the court may foreclose the lien and order the sale~~
- 30                  ~~of the transferable interest. The purchaser at the foreclosure sale obtains only the~~



transferable interest, ~~does not thereby become a member, and is subject to section 10-32.1-44.~~

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

~~5-4.~~ At any time before ~~foreclosure~~extinguishment under subsection 3, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

~~6-5.~~ This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.

~~7-6.~~ This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the transferable interest of the judgment debtor.

a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries that the debtor member might have made, is available to the judgment creditor that is attempting to satisfy the judgment out of the judgment debtor's interest in the limited liability company.

b. No creditor of a member or transferee has any right to obtain possession of or otherwise exercise legal or equitable remedies with respect to a property of the company.

7. This section applies to single member limited liability companies and limited liability companies with more than one member.

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

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

~~1. In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.~~

- 1 — 2. After a limited liability company complies with subsection 1, any surplus must be  
2 distributed in the following order, subject to any charging order in effect under section  
3 10-32.1-45 and unless otherwise provided in the articles of organization or an  
4 operating agreement:
- 5 — a. To each person owning a transferable interest that reflects contributions made by  
6 a member and not previously returned, an amount equal to the value of the  
7 unreturned contributions; and
- 8 — b. In equal shares among proportion to the value of the contributions of members  
9 and dissociated members, except to the extent necessary to comply with any  
10 transfer effective under section 10-32.1-44.
- 11 — 3. If a limited liability company does not have sufficient surplus to comply with  
12 subdivision a of subsection 2, then any surplus must be distributed among the owners  
13 of transferable interests in proportion to the value of their respective unreturned  
14 contributions.
- 15 — 4. All distributions made under subsections 2 and 3 must be paid in money unless  
16 otherwise provided in the articles of organization in an operating agreement, or by the  
17 unanimous consent of the voting members.

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

20 **45-10.2-64. (703) Rights of a creditor of partner or transferee Charging order.**

- 21 1. On application to a court of competent jurisdiction by any by a judgment creditor of a  
22 partner or of a partner's transferee, the court may charge and following notice to the  
23 partnership of the application, a court of competent jurisdiction may enter a charging  
24 order against the transferable interest of the judgment debtor with payment of the for  
25 the unsatisfied amount of the judgment with interest.
- 26 a. To the extent so charged, the judgment creditor has only the rights of a  
27 transferee.
- 28 b. The court may appoint a receiver of the share of the distributions due or to  
29 become due to the judgment debtor in respect of the partnership and make all  
30 other orders, directions, accounts, and inquiries the judgment debtor might have



~~made or which the circumstances of the case may require to give effect to the  
charging order.~~

~~6.~~

2. A charging order constitutes a lien on the transferable interest of the judgment debtor and requires the partnership to pay to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.
  3. The partner or transferee having a transferable interest subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
  4. A partnership or partner having any transferable interest not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.
- ~~2-5.~~ This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.
- ~~3-6.~~ This section provides the exclusive remedy by which a person seeking to enforce a judgment creditor ~~of against~~ a partner or transferee may satisfy, in the capacity of a judgment ~~with request to~~ creditor, the judgment from the transferable interest of the judgment debtor.
- a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner may have made, is available to the judgment creditor attempting to satisfy the judgment from the judgment debtor's interest in the partnership.
  - b. No creditor of a partner or transferee has a right to obtain possession or otherwise exercise legal or equitable remedies with respect to property of the partnership.

**SECTION 5. AMENDMENT.** Section 45-17-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. On application by a judgment creditor of a partner or of a partner's transferee and following notice to the partnership of such application, a court having jurisdiction may ~~charge~~ enter a charging order against the transferable interest of the judgment debtor



- 1           ~~to satisfy for the unsatisfied amount of the judgment. The court may appoint a receiver~~  
2           ~~of the share of the distributions due or to become due to the judgment debtor in~~  
3           ~~respect of the partnership and make all other orders, directions, accounts, and~~  
4           ~~inquiries the judgment debtor might have made or which the circumstances of the~~  
5           ~~ease may require.~~
- 6           2. A charging order constitutes a lien on the judgment debtor's transferable interest ~~in of a~~  
7           ~~judgment debtor and requires~~ the partnership ~~to pay over to the person to which the~~  
8           ~~charging order was issued any distribution that would otherwise be paid to the~~  
9           ~~judgment debtor. The court may order a foreclosure of the interest subject to the~~  
10          ~~charging order at any time. The purchaser at the foreclosure sale has the rights of a~~  
11          ~~transferee.~~
- 12          3. At any time before foreclosure, an interest charged may be redeemed:
- 13           a. ~~By the judgment debtor;~~
- 14           b. ~~With property other than partnership property, by one or more of the other~~  
15           ~~partners; or~~
- 16           c. ~~With partnership property, by one or more of the other partners with the consent~~  
17           ~~of all of the partners whose interests are not so charged~~The partner or transferee  
18           whose transferable interest is subject to a charging order may extinguish the  
19           charging order by satisfying the judgment and filing a certified copy of the  
20           satisfaction with the court that issued the order.
- 21          4. At any time before extinguishment under subsection 3, a partnership or one or more  
22          partners whose transferable interest are not subject to the charging order may pay the  
23          full amount due under the judgment to the judgment creditor and succeed to the rights  
24          of the judgment creditor, including the charging order.
- 25          5. Chapters 45-13 through 45-21 do not deprive a partner of a right under exemption  
26          laws with respect to the partner's interest in the partnership.
- 27          5-6. This section provides the exclusive remedy by which a person seeking to enforce a  
28          judgment creditor of against a partner or partner's transferee may satisfy a, in the  
29          capacity of a judgment creditor, the judgment from the transferable interest of the  
30          judgment debtor's transferable interest in the partnership debtor.

- 1           a.   No other remedy, including foreclosure of the transferable interest or a court
- 2               order for directions, accounts, and inquiries the debtor partner might have made,
- 3               is available to the judgment creditor attempting to satisfy the judgment out of the
- 4               judgment debtor's interest in the partnership.
- 5           b.   No creditor of a partner or transferee has any right to obtain possession of or
- 6               otherwise exercise legal or equitable remedies to a property of the partnership.

**PROPOSED AMENDMENT TO SENATE BILL NO. 2223**

Page 3, line 8, replace "The" with "For a limited liability company created on or after August 1, 2017, the articles of incorporation must state the"

Renumber accordingly



March 16, 2017

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PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2223

Page 1, line 1, after "10-32.1-30.1" insert "and a new subsection to section 10-32.1-39 of the North Dakota Century Code, relating to limited liability company distributions and management and partnership transferable interests"

Page 1, line 1, after the semicolon insert "and"

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

3/16/17 D10

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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 "Except as provided in section 5 of this Act, in"

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 21, remove "voting power of the"

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

Page 2, after line 25, insert:

**"SECTION 5.** A new subsection to section 10-32.1-39 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 1, in a member-managed limited liability company created after July 31, 2017, the following rules apply:

- a. The management and conduct of the company are vested in the members.
- b. 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.
- c. 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.
- d. An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
- e. 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"



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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 in an operating agreement, or by the unanimous consent of the voting members."

Renumber accordingly



Date: Mar 14, 2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB**

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

☐ Subcommittee

Amendment LC# or  
Description:

17.0777.02001

**Recommendation**

- ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions    ☐ Reconsider    ☐ \_\_\_\_\_

Motion Made By Rep Becker    Seconded By Rep Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total    (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor    Voice vote ~ Motion carried  
Assignment \_\_\_\_\_

Date: Mar 15, 2017 PM

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
BILL/RESOLUTION NO. 2223

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

☐ Subcommittee

Amendment LC# or  
Description: \_\_\_\_\_

**Recommendation**

- ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions    ☐ Reconsider    ☐ \_\_\_\_\_

Motion Made By Rep Becker Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Bosch		
Rep Kasper			Rep Dobervich		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

voice vote - motion carried

Date: Mar 15, 2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB**

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

☐ Subcommittee

Amendment LC# or  
Description: \_\_\_\_\_

**Recommendation**

- ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions

☐ Reconsider

☐ \_\_\_\_\_

Motion Made By Rep Kasper Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor

Assignment

Voice vote ~ Motion carried

remove amendment voted in AM of Mar 15.



Date: Mar 15, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

☐ Subcommittee

Amendment LC# or  
Description:

17.0777.02002

Recommendation

- ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions

☐ Reconsider

☐ \_\_\_\_\_

Motion Made By Rep Lefor    Seconded By Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total    (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor  
Assignment

Voice vote ~ Motion carried

Date: Mar 15, 2017Roll Call Vote #: 3

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB \_\_\_\_\_**

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

☐ SubcommitteeAmendment LC# or  
Description: \_\_\_\_\_

## Recommendation

☐ Adopt Amendment☒ Do Pass ☐ Do Not Pass☐ Without Committee Recommendation☒ As Amended☐ Rerefer to Appropriations☐ Place on Consent Calendar

Other Actions

☐ Reconsider☐ \_\_\_\_\_Motion Made By Rep BoschSeconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	<u>Ab</u>		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 13 No 0Absent 0Floor  
Assignment Rep Bosch

**REPORT OF STANDING COMMITTEE**

**SB 2223, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2223 was placed on the Sixth order on the calendar.

Page 1, line 1, after "10-32.1-30.1" insert "and a new subsection to section 10-32.1-39 of the North Dakota Century Code, relating to limited liability company distributions and management and partnership transferable interests"

Page 1, line 1, after the semicolon insert "and"

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 "Except as provided in section 5 of this Act, in"

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 21, remove "voting power of the"

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

Page 2, after line 25, insert:

**"SECTION 5.** A new subsection to section 10-32.1-39 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 1, in a member-managed limited liability company created after July 31, 2017, the following rules apply:

- a. The management and conduct of the company are vested in the members.
- b. 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.
- c. 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.
- d. An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
- e. 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 in an operating agreement, or by the unanimous consent of the voting members."

Renumber accordingly

**2017 CONFERENCE COMMITTEE**

**SB 2223**



# 2017 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

SB 2223

4/3/2017

Job Number 29889

☐ Subcommittee

☒ Conference Committee

Committee Clerk Signature

*Eva Liebelt*

### Explanation or reason for introduction of bill/resolution:

Relating to limited liability company distributions and management and partnership transferable interests

### Minutes:

1 Attachment

**Chairman Burckhard:** Called the committee to order. We have some work to do on this bill. I will have Representative Sukut start us off with any thoughts you might have. Can we look at the bill and see what the differences are?

**Representative Sukut:** I just found out about the committee. You want to visit about our amendments and your concerns in reference to those amendments?

**Chairman Burckhard:** The Senate version was 02000 and the House first engrossment is 03000. I was just wondering what are the obvious differences?

**Representative Bosch:** If I recall we went back and forth on the bill and the only thing we changed substantively was to add the July 31, 2017 date. The reason we did that was during discussion we weren't sure the way the bill came, if the LLCs that were established before the date, when they would be subject to the new law. So we put the date in there so those established after the date would be a new law and those before would follow the old law. Making that single change made it appear that there were a lot of changes to the bill but that is really all that was done.

**Chairman Burckhard:** I know we have amendments with this bill, this would be a good time to hand them out. These are amendments from the Secretary of State's Office. Amendment, see attachment #1.

**Barbara Siegel, Director of Business Registration and Information for the Secretary of State's Office:** Bill Guy was involved with this. The Secretary of State's office has become a little bit more involved as time has passed. The only changes, as Representative Bosch indicated, made by the House to the Senate version had to do with making the distribution proration provisions apply only to limited liability companies deal that are established after July 31, 2017. When I was looking through those I found something that was a little bit

structurally inappropriate under the code. I worked with Legislative Council and Senator Nelson to come up with the changes. She goes over the changes per the amendment attached. (4:10-7:19)

**Senate Casper:** I appreciated Representative Bosch's recollection of what was changed in the House IB&L. What was the rationale for the change, the pre-imposed July 31?

**Representative Bosch:** We were concerned because the previous bill established ownership based on the number of members and the new default would be based on percentage of ownership. We thought where there were some LLCs established before the date that looked at this law and said they wanted their default based on the number of members and by changing it retroactively we were putting it all back there and perhaps there were some who made an ownership decision based on the number of members. That was our concerns because we didn't know what was in the minds of the people establishing the LLCs previously. Hopefully that makes sense.

**Senator Casper:** So just for clarity sake. We are going from a situation where there are 5 members in a limited liability company and the member control agreement didn't control the way in which distributions were distributed but if you were going to give out one hundred dollars, everyone got an equal twenty dollars. If we now add five people and four own ten percent and one owns sixty percent, four people would get ten dollars and one person would get sixty dollars.

**Barbara Siegel:** As it was before just to be clear, we are talking member managed. In current law when you are winding up and dissolving it would have been one-third, one-third, one-third if you had three members. Here we are looking at doing it in a proportional share but just remember any one can still change an operating agreement. The House didn't change the concept that the Senate passed of going to proportional member. It just made that effective date. Basically all of the changes have to do with that effective date. She continues to go over the amendment changes. (10:08-12:15)

**Chairman Burckhard:** Is this basically things before July 31, 2017, they are grandfathered as to the way they were and after July 31, 2017 is the new?

**Barbara Siegel:** You are exactly right. So if you had an LLC that was created in January, you would follow the law that was in effect at the time. Which just seems to everybody involved to be the right thing to do.

**Chairman Burckhard:** Any questions?

**Marilyn Foss, General Counsel for the North Dakota Bankers Association:** Our concerns are not substantive at all but earlier in the session we supported Senate Bill 2159. All I am trying to do with my comments is to make sure that in the addition of the subsection and changes here that the changes of 2159 are incorporated into all sections of the bill. To insure that it may be appropriate to have some consultation with legislative counsel about the best way to do 2159 did pass the Senate unanimously. It passed the House with only four negative votes and it has been signed by the Governor. I have talked to legislative counsel about it and their informal view is that they are not in conflict but I would be more



comfortable having those commitments or that analyses done for the committee. The conflict arises on page 2, line 25, b., subsection 4. 2159 amended that same language in the existing section to include a proviso. (13:00-16:27)

**Senate Casper:** You essentially want to give us something that we are going to stick in here but technically the door is open. You said that the Governor signed 2159. So what passes last and what is signed by the Governor last is in the code. So if we wanted to do anything with 2159 we could.

**Marilyn Foss:** If you want to do something with 2159 it covers more sections than just member owned LLCs.

**Senator Casper:** I have some thoughts about that so I want to look at that a little further. If you want we can come back once more to get that done.

**Marilyn Foss:** I suppose it depends on the substance of your resolution. I have a copy of 2159 here as it's been signed. I have notes that include the additional language which would be inserted after the word, "members" in that subsection and before the period. I think you can accommodate that today as well.

**Senator Casper:** We have a number of different amendments in front of us and we have the Secretary of State and we have Bankers. I wouldn't mind coming back later this week and have something that is clean. I want to look at the change of the debt obligation in 2159 that we ended up doing. If all of you would be willing to do that. I would certainly be willing to do the work to get a package together so we can come in and whip it out.

**Chairman Burckhard:** That sounds like good advice. We can conclude this hearing.



# 2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2223  
4/5/2017  
Job Number 29935

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

*Eva Liebelt*

## Explanation or reason for introduction of bill/resolution:

Relating to limited liability company distributions and management and partnership transferable interests

## Minutes:

1 Attachment

**Chairman Burckhard:** Opened the meeting for the conference committee on SB 2223. It is our second meeting on that bill. Welcomed everyone. I will hand it over to Senator Casper for his words.

**Senator Casper:** I reviewed the 2003 version of the amendment which was prepared by Legislative Council for Senator Nelson with the request of the Secretary of State's office. I visited with the Secretary of State and with the code reviser in Legislative Councils office. I think this amendment meets the desire of the House in their amendment by changing that date but does it in a way that is recommended by the Secretary of State for clarity with regard to the code. It is my recommendation that we accept this. You can see at the top of the amendment it has the motion that needs to be made. Amendment, see attachment #1.

**Representative Sukut:** These amendments are basically our bill. It's just reorganized a bit but it's exactly the House bill. I don't think we are going to have a problem with that at all.

**Senator Casper:** The bill does the same thing, it's just cleanup language requested from the Secretary of State's office for clarity for the code. I think it should be pretty simple.

**Senator Casper** made the motion that the House recede from its amendments as printed on pages 847-849 pf the Senate Journal and pages 1011-1014 of the House Journal and that Engrossed Senate Bill 2223 be amended per 17.0777.02003.

**Senator Marcellais** seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-0

**Senator Casper** will carry the bill for the Senate.

**Representative Sukut** will carry the bill for the House.

March 24, 2017

CA  
4/5/17  
1 of 3

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."

OK  
4/5/17  
2 of 3

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."

CA  
4/5/17  
3 of 3

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

Date: 4/5/2017  
Roll Call Vote #: 1

**2017 SENATE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2223 as (re) engrossed

**Senate Industry, Business, and Labor Committee**

- Action Taken**
- ☐ **SENATE accede to House Amendments**
  - ☐ **SENATE accede to House Amendments and further amend**
  - ☐ **HOUSE recede from House amendments**
  - ☒ **HOUSE recede from House amendments and amend as follows**
  - ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Casper Seconded by: Senator Marcellais

Senators	4/3	4/5		Yes	No		Representatives	4/3	4/5		Yes	No
Chairman Burckhard	x	x		x			Representative Sukut	x	x		x	
Senator Casper	x	x		x			Representative Bosch	x	x		x	
Senator Marcellais	x	x		x			Representative Dobervich	x	x		x	
Total Senate Vote				3			Total Rep. Vote				3	

Vote Count      Yes: 6      No: 0      Absent: 0

Senate Carrier Senator Casper House Carrier Representative Sukut

LC Number 17.0777 . 02003 of amendment

LC Number \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment



Insert LC: 17.0777.02003  
Senate Carrier: Casper  
House Carrier: Sukut

**REPORT OF CONFERENCE COMMITTEE**

**SB 2223, as engrossed:** Your conference committee (Sens. Burckhard, Casper, Marcellais and Reps. Sukut, Bosch, Dobervich) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 847-849, adopt amendments as follows, and place SB 2223 on the Seventh order:

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



Insert LC: 17.0777.02003  
Senate Carrier: Casper  
House Carrier: Sukut

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.

Insert LC: 17.0777.02003  
Senate Carrier: Casper  
House Carrier: Sukut

- (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

Engrossed SB 2223 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

SB 2223



17.0777.01001  
Title.

Prepared by the Legislative Council staff for  
Senator Nelson

January 23, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2223

Page 1, line 3, after "10-32.1-54" insert ", 45-10.2-64"

Page 2, line 16, after "power" insert "in the management and conduct of the activities of the company"

Page 3, line 19, overstrike "foreclosure" and insert immediately thereafter "extinguishment"

Page 4, after line 28, insert:

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

**45-10.2-64. (703) Rights of a creditor of partner or transfereeCharging order.**

1. On application ~~to a court of competent jurisdiction by any~~ by a judgment creditor of a partner or of a partner's transferee, the court may charge and following notice to the partnership of the application, a court of competent jurisdiction may enter a charging order against the transferable interest of the judgment debtor ~~with payment of the~~ for the unsatisfied amount of the judgment ~~with interest.~~
- a. ~~To the extent so charged, the judgment creditor has only the rights of a transferee.~~
- b. ~~The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.~~
- c.
2. A charging order constitutes a lien on the transferable interest of the judgment debtor and requires the partnership to pay to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.
3. The partner or transferee having a transferable interest subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
4. A partnership or partner having any transferable interest not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.

- 2.5. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.
- 3.6. This section provides the exclusive remedy by which a person seeking to enforce a judgment creditor of against a partner or transferee may satisfy, in the capacity of a judgment with request to creditor, satisfy the judgment from the transferable interest of the judgment debtor.
- a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner may have made, is available to the judgment creditor attempting to satisfy the judgment from the judgment debtor's interest in the partnership.
- b. No creditor of a partner or transferee has a right to obtain possession or otherwise exercise legal or equitable remedies with respect to property of the partnership."

Page 5, line 25, replace "A" with "At any time before extinguishment under subsection 3, a"

Renumber accordingly

TESTIMONY OF WILLIAM L. GUY III  
IN SUPPORT OF  
SENATE BILL NO. 2223

January 25, 2017

Mr. Chairman and members of the Committee, I am here on behalf of those who were present at the December 2015 SBAND Real Property, Probate and Trust Seminar at which I presented to the group on the North Dakota LLC Act (Chapter 10-32.1) that had just been enacted by the 2015 North Dakota legislature.

At that seminar those in attendance were amazed that the Uniform LLC Act (LLC Act) provides:

- that unless otherwise provided in the articles of organization or in the operating agreement, distributions among members and the voting rights of members are equal (and not in proportion to capital contributions) as had been the case under Chapter 10-32);
- that no default provision is made at all for allocation of profits and losses among the members;
- that the charging order provisions are not as protective of the member interests of the member as was the case under Chapter 10-32.

At the conclusion of the program I told the group that when Clara Jenkins, Representative Kleiman and I prepared the Chapter 10-32.1 legislation, our mission was to prepare a bill patterned after the Minnesota version of the Uniform LLC Act and that the necessary amendments would be proposed during the 2017 session. Since general partnerships (Chapter 45-17) and limited partnerships (Chapter 45-10.2) also contain charging order provisions that are similar to those in the LLC Act, amendments have been prepared for them as well so as to promote consistency among these three entities.

Some of the highlights of the Bill include:

1. **SECTION 1** of the Bill (on page 1) is a *technical amendment* to subsection 2 of Section 10-32.1-15 resulting from the charging order amendment to Section 10-32.1-45.
2. **SECTION 2** of the Bill (on pages 2 and 3) amends subsection 1 of Section 10-32.1-30 to require that, unless otherwise provided in the articles of organization or in the operating agreement, *distributions among members* “. . . must be in proportion to the value of the contribution of the members . . . .”
3. **SECTION 3** of the Bill (on page 2) creates a new section in Chapter 10-32.1 that requires that *profits and losses* “. . . must be allocated among members in proportion to the value of the contributions of the members . . . .”



4. **SECTION 4** of the Bill (on page 2) amends subsection 2 of Section 10-32.1-39 to require that unless otherwise provided in the articles of organization or the operating agreement, “. . . each member has **voting power** in proportion to the interest of the member in distributions . . . .”

5. **SECTION 5** of the Bill (on pages 2 and 3) amends Section 10-32.1-45 to provide that a **charging order** is the sole remedy of a judgment creditor against the membership interest of the debtor member. No other remedy is available to the judgment creditor, including:

- a. foreclosure of the transfer of interests; or
- b. a court order for directions, accounts and inquiries that the debtor member might have made.

6. **SECTION 6** of the Bill (on page 4) amends Section 10-32.1-54 to require that unless otherwise provided in the articles of organization or an operating agreement, the **distributions among the members in the winding up of the activities** of an LLC “. . . must be . . . in proportion to the value of the contribution of members . . . ” and “. . . must be paid in money . . . unless otherwise provided in the articles of organization, in an operating agreement or by the unanimous consent of the voting members.”

7. **SECTION 7** of the Bill (pages 4 through 6) amends Section 45-17-04 with **charging order provisions for General Partnerships** which are identical to those of LLCs.

8. In addition, the following amendments are necessary:

- a. on page 2, line 16 after the word “power” insert . . . “in the management and conduct of the activities of the company.”
- b. on page 3, line 19 after the word “before” delete the word “foreclosure” and insert the word “. . . extinguishment. . . .”
- c. on page 5, line 25 begin the sentence with the following: “At any time before the extinguishment under subsection 3, . . . ,”
- d. attached as a separate page is language that will amend Section 45-10.2-64 to provide **Limited Partnerships with charging order provisions** which are identical to those for general partnerships (see Section 6 of the Bill).

I appreciate the opportunity to address your Committee. If you have any questions, I will be happy to answer them. Thank you.

William L. Guy III  
Fredrikson & Byron P.A.  
51 Broadway, Suite 400  
Fargo, ND 58102-4991  
Phone: 701-237-8200

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3/6/17  
SB 2223

TESTIMONY OF WILLIAM L. GUY III  
IN SUPPORT OF  
SENATE BILL NO. 2223

March 6, 2017

Mr. Chairman and members of the Committee, on behalf of those who were present at the December 2015 SBAND Real Property, Probate and Trust Seminar at which I presented to the group on the North Dakota LLC Act (Chapter 10-32.1) that had just been enacted by the 2015 North Dakota legislature.

At that seminar those in attendance were amazed that the Uniform LLC Act (LLC Act) provides:

- that unless otherwise provided in the articles of organization or in the operating agreement, distributions among members and the voting rights of members are equal and *not* in proportion to capital contributions as one would typically expect (and as had been the case under Chapter 10-32);
- that no default provision is made at all for allocation of profits and losses among the members;
- that the charging order provisions are not as protective of the member interests of the member as was the case under Chapter 10-32.

At the conclusion of the program I told the group that when Clara Jenkins, Representative Kleiman and I prepared the Chapter 10-32.1 legislation, our mission was to prepare a bill patterned after the Minnesota version of the Uniform LLC Act and that the necessary amendments would be proposed during the 2017 session. Since general partnerships (Chapter 45-17) and limited partnerships (Chapter 45-10.2) also contain charging order provisions that are similar to those in the LLC Act, amendments have been prepared for them as well so as to promote consistency among these three entities.

Some of the highlights of the Bill include:

1. **SECTION 1** of the Bill (on page 1) is a *technical amendment* to subsection 2 of Section 10-32.1-15 resulting from the charging order amendment to Section 10-32.1-45.
2. **SECTION 2** of the Bill (on pages 1 and 2) amends subsection 1 of Section 10-32.1-30 to require that, unless otherwise provided in the articles of organization or in the operating agreement, *distributions among members* “. . . must be in proportion to the value of the contribution of the members . . . .”
3. **SECTION 3** of the Bill (on page 2) creates a new section in Chapter 10-32.1 that requires that *profits and losses* “. . . must be allocated among members in proportion to the value of the contributions of the members . . . .”



4. **SECTION 4** of the Bill (on page 2) amends subsection 2 of Section 10-32.1-39 to require that unless otherwise provided in the articles of organization or the operating agreement, “. . . each member has *voting power* in proportion to the interest of the member in distributions . . . .”

5. **SECTION 5** of the Bill (pages 2 through 4) amends Section 10-32.1-45 to provide that a *charging order* is the sole remedy of a judgment creditor against the membership interest of the debtor member. No other remedy is available to the judgment creditor, including:

- a. foreclosure of the transfer of interests; or
- b. a court order for directions, accounts and inquiries that the debtor member might have made.

6. **SECTION 6** of the Bill (pages 4 through 5) amends Section 10-32.1-54 to require that unless otherwise provided in the articles of organization or an operating agreement, the *distributions among the members in the winding up of the activities* of an LLC “. . . must be . . . in proportion to the value of the contribution of members . . . ” and “. . . must be paid in money . . . unless otherwise provided in the articles of organization, in an operating agreement or by the unanimous consent of the voting members.”

7. **SECTION 7** of the Bill (pages 5 through 6) amends Section 45-10.2-64 with *charging order provisions for Limited Partnerships* which are identical to the proposed amendments for LLCs discussed above.

8. **SECTION 8** of the Bill (pages 6 through 7) amends Section 45-17-04 with *charging order provisions for General Partnerships* which are identical to the proposed amendments for LLCs discussed above.

9. Finally, this Bill contemplates “default” provisions which may be applicable to limited liability companies, general partnerships and limited partnerships who have not addressed these issues in their articles of organization, company or partnership agreements. Accordingly, it is possible that certain individuals intended the current language of the aforementioned sections of the North Dakota Century Code to govern their respective entities. Therefore, with those individuals in mind, the amendments contemplated in this Bill are intended to be prospective in nature and apply to all limited liability companies, general partnerships and limited partnerships formed on or after August 1, 2017.

I appreciate the opportunity to address your Committee. If you have any questions, I will be happy to answer them. Thank you.

William L. Guy III  
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Mar 8, 2017

TESTIMONY OF WILLIAM L. GUY III  
IN SUPPORT OF  
SENATE BILL NO. 2223

March 6, 2017

Mr. Chairman and members of the Committee, on behalf of those who were present at the December 2015 SBAND Real Property, Probate and Trust Seminar at which I presented to the group on the North Dakota LLC Act (Chapter 10-32.1) that had just been enacted by the 2015 North Dakota legislature.

At that seminar those in attendance were amazed that the Uniform LLC Act (LLC Act) provides:

- that unless otherwise provided in the articles of organization or in the operating agreement, distributions among members and the voting rights of members are equal and *not* in proportion to capital contributions as one would typically expect (and as had been the case under Chapter 10-32);
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At the conclusion of the program I told the group that when Clara Jenkins, Representative Kleiman and I prepared the Chapter 10-32.1 legislation, our mission was to prepare a bill patterned after the Minnesota version of the Uniform LLC Act and that the necessary amendments would be proposed during the 2017 session. Since general partnerships (Chapter 45-17) and limited partnerships (Chapter 45-10.2) also contain charging order provisions that are similar to those in the LLC Act, amendments have been prepared for them as well so as to promote consistency among these three entities.

Some of the highlights of the Bill include:

1. **SECTION 1** of the Bill (on page 1) is a *technical amendment* to subsection 2 of Section 10-32.1-15 resulting from the charging order amendment to Section 10-32.1-45.

2. **SECTION 2** of the Bill (on pages 1 and 2) amends subsection 1 of Section 10-32.1-30 to require that, unless otherwise provided in the articles of organization or in the operating agreement, *distributions among members* “. . . must be in proportion to the value of the contribution of the members . . . .”

3. **SECTION 3** of the Bill (on page 2) creates a new section in Chapter 10-32.1 that requires that *profits and losses* “. . . must be allocated among members in proportion to the value of the contributions of the members . . . .”

4. **SECTION 4** of the Bill (on page 2) amends subsection 2 of Section 10-32.1-39 to require that unless otherwise provided in the articles of organization or the operating agreement, “. . . each member has *voting power* in proportion to the interest of the member in distributions . . . .”

5. **SECTION 5** of the Bill (pages 2 through 4) amends Section 10-32.1-45 to provide that a *charging order* is the sole remedy of a judgment creditor against the membership interest of the debtor member. No other remedy is available to the judgment creditor, including:

- a. foreclosure of the transfer of interests; or
- b. a court order for directions, accounts and inquiries that the debtor member might have made.

6. **SECTION 6** of the Bill (pages 4 through 5) amends Section 10-32.1-54 to require that unless otherwise provided in the articles of organization or an operating agreement, the *distributions among the members in the winding up of the activities* of an LLC “. . . must be . . . in proportion to the value of the contribution of members . . . .” and “. . . must be paid in money . . . unless otherwise provided in the articles of organization, in an operating agreement or by the unanimous consent of the voting members.”

7. **SECTION 7** of the Bill (pages 5 through 6) amends Section 45-10.2-64 with *charging order provisions for Limited Partnerships* which are identical to the proposed amendments for LLCs discussed above.

8. **SECTION 8** of the Bill (pages 6 through 7) amends Section 45-17-04 with *charging order provisions for General Partnerships* which are identical to the proposed amendments for LLCs discussed above.

9. Finally, this Bill contemplates “default” provisions which may be applicable to limited liability companies, general partnerships and limited partnerships who have not addressed these issues in their articles of organization, company or partnership agreements. Accordingly, it is possible that certain individuals intended the current language of the aforementioned sections of the North Dakota Century Code to govern their respective entities. Therefore, with those individuals in mind, the amendments contemplated in this Bill are intended to be prospective in nature and apply to all limited liability companies, general partnerships and limited partnerships formed on or after August 1, 2017.

I appreciate the opportunity to address your Committee. If you have any questions, I will be happy to answer them. Thank you.

William L. Guy III  
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Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2223

Introduced by

Mar 14, 2017

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~~  
3 ~~10-32.1-39~~ subsection 2 of section 10-32.1-20, sections 10-32.1-45, ~~10-32.1-54~~, 45-10.2-64,  
4 and 45-17-04 of the North Dakota Century Code, relating to limited liability company  
5 distributions and management and partnership transferable interests.

**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~~



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

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

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

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

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

2. In a member-managed limited liability company, the following rules apply:

a. The management and conduct of the company are vested in the members.

b. Each member has equal rights in the management and conduct of the activities  
of the company. 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.

c. 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.

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

e. The operating agreement may be amended only with the consent of all members.

**SECTION 2. AMENDMENT.** Subsection 2 of section 10-32.1-20 of the North Dakota  
Century Code is amended and reenacted as follows:

2. The articles of organization:

a. Must state:

(1) The name of the limited liability company, which must comply with section  
10-32.1-11;

(2) With respect to the registered agent:

(a) The name of the commercial registered agent of the limited liability company as provided in chapter 10-01.1; or

(b) The name and address of a noncommercial registered agent in this state as provided in chapter 10-01.1;

(c) The address of the principal executive office;

(d) The name and address of each organizer; and

(3) The method of determining allocation of profits and losses, distribution, and the voting powers of members.

b. May state an effective date of organization, which must not be later than ninety days from the date of filing with the secretary of state.

**SECTION 3. AMENDMENT.** Section 10-32.1-45 of the North Dakota Century Code is amended and reenacted as follows:

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

1. On application by a judgment creditor of a member or transferee and following notice to the limited liability company of the application, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment.

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

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

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

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

~~3. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, then the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the~~



1 transferable interest, does not thereby become a member, and is subject to section  
2 10-32.1-44.

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

7 ~~5.4.~~ At any time before ~~foreclosure~~extinguishment under subsection 3, a limited liability  
8 company or one or more members whose transferable interests are not subject to the  
9 charging order may pay to the judgment creditor the full amount due under the  
10 judgment and thereby succeed to the rights of the judgment creditor, including the  
11 charging order.

12 ~~6.5.~~ This chapter does not deprive any member or transferee of the benefit of any  
13 exemption laws applicable to the transferable interest of the member or transferee.

14 ~~7.6.~~ This section provides the exclusive remedy by which a person seeking to enforce a  
15 judgment against a member or transferee may, in the capacity of judgment creditor,  
16 satisfy the judgment from the transferable interest of the judgment debtor.

17 a. No other remedy, including foreclosure of the transferable interest or a court  
18 order for directions, accounts, and inquiries that the debtor member might have  
19 made, is available to the judgment creditor that is attempting to satisfy the  
20 judgment out of the judgment debtor's interest in the limited liability company.

21 b. No creditor of a member or transferee has any right to obtain possession of or  
22 otherwise exercise legal or equitable remedies with respect to a property of the  
23 company.

24 7. This section applies to single member limited liability companies and limited liability  
25 companies with more than one member.

26 ~~—SECTION 6. AMENDMENT. Section 10-32.1-54 of the North Dakota Century Code is~~  
27 ~~amended and reenacted as follows:~~

28 ~~—10-32.1-54. Distribution of assets in winding up limited liability activities of the~~  
29 ~~company.~~

30 ~~—1. In winding up its activities, a limited liability company must apply its assets to~~  
31 ~~discharge its obligations to creditors, including members that are creditors.~~



- 1 ~~2. After a limited liability company complies with subsection 1, any surplus must be~~  
2 ~~distributed in the following order, subject to any charging order in effect under section~~  
3 ~~10-32.1-45 and unless otherwise provided in the articles of organization or an~~  
4 ~~operating agreement:~~
- 5 ~~a. To each person owning a transferable interest that reflects contributions made by~~  
6 ~~a member and not previously returned, an amount equal to the value of the~~  
7 ~~unreturned contributions; and~~
- 8 ~~b. In equal shares among proportion to the value of the contributions of members~~  
9 ~~and dissociated members, except to the extent necessary to comply with any~~  
10 ~~transfer effective under section 10-32.1-44.~~
- 11 ~~3. If a limited liability company does not have sufficient surplus to comply with~~  
12 ~~subdivision a of subsection 2, then any surplus must be distributed among the owners~~  
13 ~~of transferable interests in proportion to the value of their respective unreturned~~  
14 ~~contributions.~~
- 15 ~~4. All distributions made under subsections 2 and 3 must be paid in money unless~~  
16 ~~otherwise provided in the articles of organization in an operating agreement, or by the~~  
17 ~~unanimous consent of the voting members.~~

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

20 **45-10.2-64. (703) Rights of a creditor of partner or transferee Charging order.**

- 21 1. On application to a court of competent jurisdiction by ~~any~~ a judgment creditor of a  
22 partner or of a partner's transferee, the court may ~~charge~~ and following notice to the  
23 partnership of the application, a court of competent jurisdiction may enter a charging  
24 order against the transferable interest of the judgment debtor ~~with payment of the~~ for  
25 the unsatisfied amount of the judgment ~~with interest.~~
- 26 a. ~~To the extent so charged, the judgment creditor has only the rights of a~~  
27 ~~transferee.~~
- 28 b. The court may appoint a receiver of the share of the distributions due or to  
29 become due to the judgment debtor in respect of the partnership and make all  
30 other orders, directions, accounts, and inquiries the judgment debtor might have

~~made or which the circumstances of the case may require to give effect to the  
charging order.~~

~~e.~~

2. A charging order constitutes a lien on the transferable interest of the judgment debtor and requires the partnership to pay to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.
3. The partner or transferee having a transferable interest subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
4. A partnership or partner having any transferable interest not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.
- 2.5. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.
- 3.6. This section provides the exclusive remedy by which a person seeking to enforce a judgment creditor of against a partner or transferee may satisfy, in the capacity of a judgment with request to creditor, the judgment from the transferable interest of the judgment debtor.
  - a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner may have made, is available to the judgment creditor attempting to satisfy the judgment from the judgment debtor's interest in the partnership.
  - b. No creditor of a partner or transferee has a right to obtain possession or otherwise exercise legal or equitable remedies with respect to property of the partnership.

**SECTION 5. AMENDMENT.** Section 45-17-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. On application by a judgment creditor of a partner or of a partner's transferee and following notice to the partnership of such application, a court having jurisdiction may charge enter a charging order against the transferable interest of the judgment debtor



1        ~~to satisfy for the unsatisfied amount of the judgment. The court may appoint a receiver~~  
2        ~~of the share of the distributions due or to become due to the judgment debtor in~~  
3        ~~respect of the partnership and make all other orders, directions, accounts, and~~  
4        ~~inquiries the judgment debtor might have made or which the circumstances of the~~  
5        ~~case may require.~~

6        2. A charging order constitutes a lien on the judgment debtor's transferable interest ~~in of a~~  
7        judgment debtor and requires the partnership to pay over to the person to which the  
8        charging order was issued any distribution that would otherwise be paid to the  
9        judgment debtor. The court may order a foreclosure of the interest subject to the  
10       ~~charging order at any time. The purchaser at the foreclosure sale has the rights of a~~  
11       ~~transferee.~~

12       3. ~~At any time before foreclosure, an interest charged may be redeemed:~~  
13       a. ~~By the judgment debtor;~~  
14       b. ~~With property other than partnership property, by one or more of the other~~  
15       ~~partners; or~~  
16       c. ~~With partnership property, by one or more of the other partners with the consent~~  
17       ~~of all of the partners whose interests are not so charged.~~ The partner or transferee  
18       whose transferable interest is subject to a charging order may extinguish the  
19       charging order by satisfying the judgment and filing a certified copy of the  
20       satisfaction with the court that issued the order.

21       4. At any time before extinguishment under subsection 3, a partnership or one or more  
22       partners whose transferable interest are not subject to the charging order may pay the  
23       full amount due under the judgment to the judgment creditor and succeed to the rights  
24       of the judgment creditor, including the charging order.

25       5. Chapters 45-13 through 45-21 do not deprive a partner of a right under exemption  
26       laws with respect to the partner's interest in the partnership.

27       5.6. This section provides the exclusive remedy by which a person seeking to enforce a  
28       judgment creditor of against a partner or partner's transferee may satisfy ~~a~~, in the  
29       capacity of a judgment creditor, the judgment from the transferable interest of the  
30       judgment debtor's transferable interest in the partnership debtor.



- 1           a. No other remedy, including foreclosure of the transferable interest or a court
- 2           order for directions, accounts, and inquiries the debtor partner might have made,
- 3           is available to the judgment creditor attempting to satisfy the judgment out of the
- 4           judgment debtor's interest in the partnership.
- 5           b. No creditor of a partner or transferee has any right to obtain possession of or
- 6           otherwise exercise legal or equitable remedies to a property of the partnership.

Mar 15, 2017

Bill LC# 17.0777.02001

Prepared by Legislative Intern 8  
March 14, 2017

**PROPOSED AMENDMENT TO SENATE BILL NO. 2223**

Page 3, line 8, replace "The" with "For a limited liability company created on or after August 1, 2017, the articles of incorporation must state the"

Renumber accordingly

March 24, 2017

SB 2223

4/3/17

#1

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 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



17.0777.02003  
Title.

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:

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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:

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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:

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- (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."

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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