

**SENATE BILL NO. 2223**

Introduced by

Senators Nelson, Armstrong, Sorvaag

Representatives M. Johnson, Klemin, Schneider

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **10-32.1-45. Charging order.**

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

- 1        2. A charging order constitutes a lien on the transferable interest of a judgment debtor  
2        and requires the limited liability company to pay over to the person to which the  
3        charging order was issued any distribution that would otherwise be paid to the  
4        judgment debtor.
- 5        ~~2.3.~~ To the extent necessary to effectuate the collection of distributions pursuant to a  
6        charging order in effect under subsection 1, the court may:
- 7        a. Appoint a receiver of the distributions subject to the charging order, with the  
8        power to make all inquiries the judgment debtor might have made; and  
9        b. Make all other orders necessary to give effect to the charging order.
- 10       ~~3.~~ Upon a showing that distributions under a charging order will not pay the judgment  
11       debt within a reasonable time, then the court may foreclose the lien and order the sale  
12       of the transferable interest. The purchaser at the foreclosure sale obtains only the  
13       transferable interest, does not thereby become a member, and is subject to section  
14       10-32.1-44.
- 15       ~~4.~~ At any time before foreclosure under subsection 3, ~~the~~The member or transferee  
16       whose transferable interest is subject to a charging order ~~under subsection 4~~ may  
17       extinguish the charging order by satisfying the judgment and filing a certified copy of  
18       the satisfaction with the court that issued the charging order.
- 19       ~~5.4.~~ At any time before foreclosure under subsection 3, a limited liability company or one or  
20       more members whose transferable interests are not subject to the charging order may  
21       pay to the judgment creditor the full amount due under the judgment and thereby  
22       succeed to the rights of the judgment creditor, including the charging order.
- 23       ~~6.5.~~ This chapter does not deprive any member or transferee of the benefit of any  
24       exemption laws applicable to the transferable interest of the member or transferee.
- 25       ~~7.6.~~ This section provides the exclusive remedy by which a person seeking to enforce a  
26       judgment against a member or transferee may, in the capacity of judgment creditor,  
27       satisfy the judgment from the transferable interest of the judgment debtor.
- 28       a. No other remedy, including foreclosure of the transferable interest or a court  
29       order for directions, accounts, and inquiries that the debtor member might have  
30       made, is available to the judgment creditor that is attempting to satisfy the  
31       judgment out of the judgment debtor's interest in the limited liability company.

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

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

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

8           **10-32.1-54. Distribution of assets in winding up limited liability activities of the**  
9 **company.**

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

29           **SECTION 7. AMENDMENT.** Section 45-17-04 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1       **45-17-04. (504) Partner's transferable interest subject to charging order.**

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

- 1     ~~5-6.~~ This section provides the exclusive remedy by which a person seeking to enforce a  
2            judgment creditor ~~of~~against a partner or partner's transferee may satisfy a, in the  
3            capacity of a judgment creditor, satisfy the judgment from the transferable interest  
4            of the judgment debtor's transferable interest in the partnership ~~debtor~~.
- 5            a. No other remedy, including foreclosure of the transferable interest or a court  
6            order for directions, accounts, and inquiries the debtor partner might have made,  
7            is available to the judgment creditor attempting to satisfy the judgment out of the  
8            judgment debtor's interest in the partnership.
- 9            b. No creditor of a partner or transferee has any right to obtain possession of or  
10           otherwise exercise legal or equitable remedies to a property of the partnership.