

**FIRST ENGROSSMENT  
with House Amendments  
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 and a new subsection to section  
2 10-32.1-39 of the North Dakota Century Code, relating to limited liability company distributions  
3 and management and partnership transferable interests; and to amend and reenact  
4 subsection 2 of section 10-32.1-15, section 10-32.1-30, subsection 2 of section 10-32.1-39, and  
5 sections 10-32.1-45, 10-32.1-54, 45-10.2-64, and 45-17-04 of the North Dakota Century Code,  
6 relating to limited liability company distributions and management and partnership transferable  
7 interests.

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

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

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

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

21 **10-32.1-30. Sharing of and right to distributions before dissolution.**

22 1. ~~Subject~~Except as provided in subsection 5 and subject to paragraphs 1 through 4 of  
23 subdivision c of subsection 4 of section 10-32.1-05, any distributions made by a limited  
24 liability company before its dissolution and winding up must be in equal shares among

1 members and dissociated members, except to the extent necessary to comply with  
2 any transfer effective under section 10-32.1-44 and any charging order in effect under  
3 section 10-32.1-45.

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

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

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

16 5. Notwithstanding subsection 1, subject to paragraphs 1 through 4 of subdivision c of  
17 subsection 4 of section 10-32.1-05 and unless otherwise provided in the articles of  
18 organization or in an operating agreement, for a limited liability company created after  
19 July 31, 2017, any distributions among members and dissociated members made by a  
20 limited liability company before its dissolution and winding up must be in proportion to  
21 the value of the contributions of the members, except to the extent necessary to  
22 comply with any transfer effective under section 10-32.1-44 and any charging order in  
23 effect under section 10-32.1-45.

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

26 **10-32.1-30.1. Sharing of profits and loss.**

27 Unless otherwise provided in the articles of organization, or in an operating agreement, the  
28 profits and losses of a limited liability company created after July 31, 2017, must be allocated  
29 among the members and among classes and series of members in proportion to the value of  
30 the contributions of the members.

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

- 3       2. ~~In~~Except as provided in section 5 of this Act, in a member-managed limited liability  
4 company, the following rules apply:
- 5       a. The management and conduct of the company are vested in the members.
  - 6       b. Each member has equal rights in the management and conduct of the activities  
7 of the company.
  - 8       c. A difference arising among members as to a matter in the ordinary course of the  
9 activities of the company may be decided by a majority of the members.
  - 10       d. An act outside the ordinary course of the activities of the company may be  
11 undertaken only with the consent of all members.
  - 12       e. The operating agreement may be amended only with the consent of all members.

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

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

- 17       a. The management and conduct of the company are vested in the members.
- 18       b. Unless otherwise provided in the articles of organization or in an operating  
19 agreement, each member possesses voting power in the management and  
20 conduct of the activities of the company in proportion to the interest of the  
21 member in distributions of the limited liability company before dissolution and  
22 winding up.
- 23       c. A difference arising among members as to a matter in the ordinary course of the  
24 activities of the company may be decided by a majority of the voting power of the  
25 transferable interest of the members.
- 26       d. An act outside the ordinary course of the activities of the company may be  
27 undertaken only with the consent of all members.
- 28       e. The operating agreement may be amended only with the consent of all members.

29       **SECTION 6. AMENDMENT.** Section 10-32.1-45 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1       **10-32.1-45. Charging order.**

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

6       2. A charging order constitutes a lien on the transferable interest of a judgment debtor  
7       and requires the limited liability company 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.

10      ~~2.3.~~ ~~To the extent necessary to effectuate the collection of distributions pursuant to a~~  
11      ~~charging order in effect under subsection 1, the court may:~~

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

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

15      ~~3.~~ ~~Upon a showing that distributions under a charging order will not pay the judgment~~  
16      ~~debt within a reasonable time, then the court may foreclose the lien and order the sale~~  
17      ~~of the transferable interest. The purchaser at the foreclosure sale obtains only the~~  
18      ~~transferable interest, does not thereby become a member, and is subject to section~~  
19      ~~10-32.1-44.~~

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

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

29      ~~6.5.~~ 6.5. This chapter does not deprive any member or transferee of the benefit of any  
30      exemption laws applicable to the transferable interest of the member or transferee.

1     7.6. This section provides the exclusive remedy by which a person seeking to enforce a  
2           judgment against a member or transferee may, in the capacity of judgment creditor,  
3           satisfy the judgment from the transferable interest of the judgment debtor.

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

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

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

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

15          **10-32.1-54. Distribution of assets in winding up limited liability activities of the**  
16          **company.**

17          1. ~~In~~Except as provided in subsection 5, in winding up its activities, a limited liability  
18          company ~~must~~shall apply its assets to discharge its obligations to creditors, including  
19          members that are creditors.

20          2. After a limited liability company complies with subsection 1, any surplus must be  
21          distributed in the following order, subject to any charging order in effect under section  
22          10-32.1-45:

23           a. To each person owning a transferable interest that reflects contributions made by  
24           a member and not previously returned, an amount equal to the value of the  
25           unreturned contributions; and

26           b. In equal shares among members and dissociated members, except to the extent  
27           necessary to comply with any transfer effective under section 10-32.1-44.

28          3. If a limited liability company does not have sufficient surplus to comply with  
29          subdivision a of subsection 2, then any surplus must be distributed among the owners  
30          of transferable interests in proportion to the value of their respective unreturned  
31          contributions.

- 1       4. All distributions made under subsections 2 and 3 must be paid in money.
- 2       5. a. Notwithstanding subsections 1 through 4, in winding up its activities a limited  
3             liability company created after July 31, 2017, shall apply its assets to discharge  
4             its obligations to creditors, including members that are creditors.
- 5       b. After a limited liability company complies with subdivision a, any surplus must be  
6             distributed in the following order, subject to any charging order in effect under  
7             section 10-32.1-45 and unless otherwise provided in the articles of organization  
8             or an operating agreement:
- 9             (1) To each person owning a transferable interest that reflects contributions  
10            made by a member and not previously returned, an amount equal to the  
11            value of the unreturned contributions; and
- 12            (2) In proportion to the value of the contributions of members and dissociated  
13            members, except to the extent necessary to comply with any transfer  
14            effective under section 10-32.1-44.
- 15       c. If a limited liability company does not have sufficient surplus to comply with  
16             paragraph 1 of subdivision b, any surplus must be distributed among the owners  
17             of transferable interests in proportion to the value of their respective unreturned  
18             contributions.
- 19       d. All distributions made under subdivisions a and b must be paid in money unless  
20             otherwise provided in the articles of organization in an operating agreement, or  
21             by the unanimous consent of the voting members.

22       **SECTION 8. AMENDMENT.** Section 45-10.2-64 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24       **45-10.2-64. (703) ~~Rights of a creditor of partner or transferee~~Charging order.**

- 25       1. On application ~~to a court of competent jurisdiction by any~~by a judgment creditor of a  
26 partner or ~~of a partner's transferee, the court may charge~~and following notice to the  
27 partnership of the application, a court of competent jurisdiction may enter a charging  
28 order ~~against~~ the transferable interest of the judgment debtor ~~with payment of the~~for  
29 ~~the~~ unsatisfied amount of the judgment ~~with interest.~~
- 30       a. ~~To the extent so charged, the judgment creditor has only the rights of a~~  
31             ~~transferee.~~

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

6           e.

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

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

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

16          2.5. This chapter does not deprive any partner or transferee of the benefit of any  
17          exemption laws applicable to the transferable interest of the partner or transferee.

18          3.6. This section provides the exclusive remedy by which a person seeking to enforce a  
19          judgment creditor of against a partner or transferee may satisfy, in the capacity of a  
20          judgment with request to creditor, the judgment from the transferable interest of the  
21          judgment debtor.

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

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

29          **SECTION 9. 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. At any time before extinguishment under subsection 3, a partnership or one or more  
26      partners whose transferable interest are not subject to the charging order may pay the  
27      full amount due under the judgment to the judgment creditor and succeed to the rights  
28      of the judgment creditor, including the charging 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, the judgment from the transferable interest of the  
4            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.