

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1020

5 By: Representative Maddox
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For An Act To Be Entitled

8 AN ACT TO AMEND THE UNIFORM LIMITED LIABILITY COMPANY
9 ACT; TO REVISE CHARGING ORDERS UNDER THE UNIFORM
10 LIMITED LIABILITY COMPANY ACT; AND FOR OTHER
11 PURPOSES.
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Subtitle

14 TO AMEND THE UNIFORM LIMITED LIABILITY
15 COMPANY ACT; AND TO REVISE CHARGING
16 ORDERS UNDER THE UNIFORM LIMITED
17 LIABILITY COMPANY ACT.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 4-38-107(b), concerning the obligations of
24 a limited liability company to third parties under the Uniform Limited
25 Liability Company Act, is amended to read as follows:

26 (b) The obligations of a limited liability company and its members to
27 a person in the person's capacity as a transferee or a person dissociated as
28 a member are governed by the operating agreement. ~~Subject only to a court~~
29 ~~order issued under § 4-38-503(b)(2) to effectuate a charging order, an~~ An
30 amendment to the operating agreement made after a person becomes a transferee
31 or is dissociated as a member:

32 (1) is effective with regard to any debt, obligation, or other
33 liability of the limited liability company or its members to the person in
34 the person's capacity as a transferee or person dissociated as a member; and

35 (2) is not effective to the extent the amendment imposes a new
36 debt, obligation, or other liability on the transferee or person dissociated



1 as a member.

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3 SECTION 2. Arkansas Code § 4-38-502(a), concerning the transfer of
 4 transferable interest under the Uniform Limited Liability Company Act, is
 5 amended to read as follows:

6 (a) ~~Subject to § 4-38-503(f), a~~ A transfer, in whole or in part, of a
 7 transferable interest:

8 (1) is permissible;

9 (2) does not by itself cause a person's dissociation as a member
 10 or a dissolution and winding up of the limited liability company's activities
 11 and affairs; and

12 (3) subject to § 4-38-504, does not entitle the transferee to:

13 (A) participate in the management or conduct of the
 14 company's activities and affairs; or

15 (B) except as otherwise provided in subsection (c), have
 16 access to records or other information concerning the company's activities
 17 and affairs.

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19 SECTION 3. Arkansas Code § 4-38-502(g), concerning the rights of a
 20 transferor of a transferable interest under the Uniform Limited Liability
 21 Company Act, is amended to read as follows:

22 (g) ~~Except as otherwise provided in § 4-38-602(5)(B), if~~ If a member
 23 transfers a transferable interest, the transferor retains the rights of a
 24 member other than the transferable interest transferred and retains all the
 25 duties and obligations of a member.

26

27 SECTION 4. Arkansas Code § 4-38-503 is amended to read as follows:

28 4-38-503. Charging order.

29 (a) On application to a court of competent jurisdiction by a judgment
 30 creditor of a member ~~or transferee, a~~ the court may ~~enter a charging order~~
 31 ~~against the transferable interest of the judgment debtor for~~ charge the
 32 member's interest with payment of the unsatisfied amount of the judgment with
 33 interest. ~~Except as otherwise provided in subsection (f), a charging order~~
 34 ~~constitutes a lien on a judgment debtor's transferable interest and requires~~
 35 ~~the limited liability company to pay over to the person to which the charging~~
 36 ~~order was issued any distribution that otherwise would be paid to the~~

1 ~~judgment debtor~~ To the extent so charged, the judgment creditor has only the
2 rights of an assignee of the member's interest.

3 (b) ~~To the extent necessary to effectuate the collection of~~
4 ~~distributions pursuant to a charging order in effect under subsection (a),~~
5 ~~the court may:~~

6 (1) ~~appoint a receiver of the distributions subject to the~~
7 ~~charging order, with the power to make all inquiries the judgment debtor~~
8 ~~might have made; and~~

9 (2) ~~make all other orders necessary to give effect to the~~
10 ~~charging order.~~

11 (c) ~~Upon a showing that distributions under a charging order will not~~
12 ~~pay the judgment debt within a reasonable time, the court may foreclose the~~
13 ~~lien and order the sale of the transferable interest. Except as otherwise~~
14 ~~provided in subsection (f), the purchaser at the foreclosure sale obtains~~
15 ~~only the transferable interest, does not thereby become a member, and is~~
16 ~~subject to § 4-38-502.~~

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

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

27 (f) ~~If a court orders foreclosure of a charging order lien against the~~
28 ~~sole member of a limited liability company:~~

29 (1) ~~the court shall confirm the sale;~~

30 (2) ~~the purchaser at the sale obtains the member's entire~~
31 ~~interest, not only the member's transferable interest;~~

32 (3) ~~the purchaser thereby becomes a member; and~~

33 (4) ~~the person whose interest was subject to the foreclosed~~
34 ~~charging order is dissociated as a member.~~

35 (g) ~~This chapter does not deprive any member or transferee of the~~
36 ~~benefit of any exemption law applicable to the transferable interest of the~~

~~member or transferee.~~

~~(h)~~ This section:

~~(1)(A) provides~~ Provides the exclusive remedy by which a ~~person~~ seeking in the capacity of judgment creditor of a member or an assignee of a member to enforce a judgment against a member or transferee may satisfy the a judgment ~~from the judgment debtor's transferable interest~~ out of the member's interest of the judgment debtor, whether or not the limited liability company has one (1) member or more than one (1) member.

(B)(i) Other remedies, including without limitation foreclosure on the member's interest or a court order for directions, accounts, and inquiries that the debtor or member might have made, are not available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the limited liability company.

(ii) A court shall not order any other remedy;

(2) Does not deprive a member of the benefit of any exemption applicable to his or her interest; and

(3) Does not supersede any written agreement between a member and a creditor if the written agreement does not conflict with the limited liability company's certificate of organization or operating agreement.

SECTION 5. Arkansas Code § 4-38-602(3), concerning a foreclosure sale as an event causing dissociation under the Uniform Limited Liability Company Act, is repealed.

~~(3) the person's entire interest is transferred in a foreclosure sale under § 4-38-503(f);~~

SECTION 6. Arkansas Code § 4-38-602(5), concerning expulsion of a member if a charging order has not been foreclosed under the Uniform Limited Liability Company Act, is amended to read as follows:

(5) the person is expelled as a member by the affirmative vote or consent of all the other members if:

(A) it is unlawful to carry on the limited liability company's activities and affairs with the person as a member;

(B) there has been a transfer of all the person's transferable interest in the company, other than:

(i) a transfer for security purposes; or

1 (ii) a charging order in effect under § 4-38-503
2 ~~which has not been foreclosed;~~

3 (C) the person is an entity and:

4 (i) the company notifies the person that it will be
5 expelled as a member because the person has filed a statement of dissolution
6 or the equivalent, the person has been administratively dissolved, the
7 person's charter or the equivalent has been revoked, or the person's right to
8 conduct business has been suspended by the person's jurisdiction of
9 formation; and

10 (ii) not later than ~~90~~ ninety (90) days after the
11 notification, the statement of dissolution or the equivalent has not been
12 withdrawn, rescinded, or revoked, the person has not been reinstated, or the
13 person's charter or the equivalent or right to conduct business has not been
14 reinstated; or

15 (D) the person is an unincorporated entity that has been
16 dissolved and whose activities and affairs are being wound up;

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