

Stricken language would be deleted from and underlined language would be added to present law.

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

As Engrossed: H2/9/23 S4/4/23

A Bill

HOUSE BILL 1020

5 By: Representative Maddox
6 By: Senator C. Penzo
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE UNIFORM LIMITED LIABILITY COMPANY
10 ACT; TO REVISE CHARGING ORDERS UNDER THE UNIFORM
11 LIMITED LIABILITY COMPANY ACT; AND FOR OTHER
12 PURPOSES.
13
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Subtitle

15 TO AMEND THE UNIFORM LIMITED LIABILITY
16 COMPANY ACT; AND TO REVISE CHARGING
17 ORDERS UNDER THE UNIFORM LIMITED
18 LIABILITY COMPANY ACT.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code § 4-38-502(a), concerning the transfer of
26 transferable interest under the Uniform Limited Liability Company Act, is
27 amended to read as follows:

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

30 (1) is permissible;

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

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

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



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

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5 SECTION 2. Arkansas Code § 4-38-503 is amended to read as follows:
6 4-38-503. Charging order.

7 (a) On application to a court of competent jurisdiction by a judgment
8 creditor of a member or transferee, a the court may ~~enter a charging order~~
9 ~~against the transferable interest of the judgment debtor for~~ charge the
10 transferable interest with payment of the unsatisfied amount of the judgment
11 with interest. ~~Except as otherwise provided in subsection (f), a~~ A charging
12 order constitutes a lien on a judgment debtor's transferable interest and
13 requires the limited liability company to pay over to the person to which the
14 charging order was issued any distribution that otherwise would be paid to
15 the judgment creditor.

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

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

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

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

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

35 (e) ~~At any time before foreclosure under subsection (c), a limited~~
36 ~~liability company or one or more members whose transferable interests are not~~

1 ~~subject to the charging order may pay to the judgment creditor the full~~
2 ~~amount due under the judgment and thereby succeed to the rights of the~~
3 ~~judgment creditor, including the charging order.~~

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

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

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

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

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

12 ~~(g) This chapter does not deprive any member or transferee of the~~
13 ~~benefit of any exemption law applicable to the transferable interest of the~~
14 ~~member or transferee.~~

15 ~~(h) On application to a court of competent jurisdiction by a judgment~~
16 ~~creditor of a member or transferee against whose transferable interest a~~
17 ~~charging order was issued, and a showing to the satisfaction of the court~~
18 ~~that one (1) or more members of the limited liability company have engaged in~~
19 ~~bad faith or intentional misconduct in managing the limited liability~~
20 ~~company's operations or finances so as to reduce or eliminate distributions~~
21 ~~to the judgment debtor, and thereby effectively defeat the charging order,~~
22 ~~the court may foreclose the lien and order the sale of the judgment debtor's~~
23 ~~transferable interest. Except as otherwise provided in subsection (c), the~~
24 ~~purchaser at the foreclosure sale obtains only the transferable interest,~~
25 ~~does not thereby become a member, and is subject to § 4-38-502. At any time~~
26 ~~before foreclosure under this subsection (b), the member or transferee whose~~
27 ~~transferable interest is subject to a charging order under subsection (a) may~~
28 ~~extinguish the charging order by satisfying the judgment and filing a~~
29 ~~certified copy of the satisfaction with the court that issued the charging~~
30 ~~order. At any time before foreclosure under this subsection (b), a limited~~
31 ~~liability company or one (1) or more members whose transferable interests are~~
32 ~~not subject to the charging order may pay to the judgment creditor the full~~
33 ~~amount due under the judgment and thereby succeed to the rights of the~~
34 ~~judgment creditor, including the charging order.~~

35 ~~(c) On application to a court of competent jurisdiction by a judgment~~
36 ~~creditor of the sole member of a limited liability company against whose~~

1 transferable interest a charging order was issued, and a showing to the
2 satisfaction of the court that that distributions under a charging order will
3 not pay the judgment debt within a reasonable time, the court may foreclose
4 the lien and order the sale of the transferable interest. If a court orders
5 foreclosure of a charging order lien against the sole member of a limited
6 liability company:

7 (1) the court shall confirm the sale;

8 (2) the purchaser at the sale obtains the member's entire
9 interest, not only the member's transferable interest;

10 (3) the purchaser thereby becomes a member; and

11 (4) the person whose interest was subject to the foreclosed
12 charging order is dissociated as a member.

13 (d) This section:

14 (1)(A) Shall not operate to invalidate any provision of any
15 written agreement between a member and a creditor, including without
16 limitation a security agreement, assignment, or other instrument giving the
17 creditor a security interest in, or assignment of, the transferable interest,
18 where a the time of the written agreement, security agreement, assignment, or
19 other instrument was executed by the member and the creditor, the member's
20 executing such written agreement, security agreement, assignment, or other
21 instrument did not violate a provision of the limited liability company's
22 certificate of organization or operating agreement.

23 (B) Except as provided in subsection (c), the foreclosure
24 of a charging order does not grant the creditor who receives the transferable
25 interest any rights in the transferable interest beyond the rights of a
26 transferee;

27 (2)(A) ~~provides~~ Provides the exclusive remedy by which a ~~person~~
28 ~~seeking in the capacity of~~ judgment creditor ~~of a member or a transferee of a~~
29 ~~member to enforce a judgment against a member or transferee may satisfy the a~~
30 ~~judgment from the judgment debtor's transferable interest out of the member's~~
31 ~~interest in the limited liability company, where the limited liability~~
32 ~~company has more than one (1) member.~~

33 (B)(i) In the case of a limited liability company with
34 more than one (1) member, other remedies, including without limitation
35 foreclosure on the member's interest, except as provided in subsection (b),
36 or a court order for directions, accounts, and inquiries that the debtor or

1 member might have made, are not available to the judgment creditor attempting
2 to satisfy the judgment out of the judgment debtor's transferable interest in
3 the limited liability company;

4 (3) Does not deprive a member of the benefit of any exemption
5 applicable to his or her interest.

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/s/Maddox