

S.B. 21
UNINCORPORATED BUSINESS ENTITIES

Senator **John L. Valentine** proposes the following amendments:

1. Page 80, Line 2462 through Page 81, Line 2490:

2462 48-1d-604. Charging order.

2463 (1) On application by a judgment creditor of a partner or transferee, a court may enter a

2464 charging order against the transferable interest of the judgment debtor for the unsatisfied

2465 amount of the judgment. ~~{ A charging order constitutes a lien on a judgment debtor's~~

2466 transferable interest and, after the partnership has been served with the charging order, requires

2467 the partnership to pay over to the person to which the charging order was issued any

2468 distribution that otherwise would be paid to the judgment debtor.

2469 ~~—— (2) To the extent necessary to effectuate the collection of distributions pursuant to a~~

2470 ~~charging order in effect under Subsection (1), the court may:~~

2471 ~~—— (a) appoint a receiver of the distributions subject to the charging order, with the power~~

2472 ~~to make all inquiries the judgment debtor might have made; and~~

2473 ~~—— (b) make all other orders necessary to give effect to the charging order.~~

2474 ~~—— (3) Upon a showing that distributions under a charging order will not pay the judgment~~

2475 ~~debt within a reasonable time, the court may foreclose the lien and order the sale of the~~

2476 ~~transferable interest. The purchaser at the foreclosure sale obtains only the transferable~~

2477 ~~interest, does not thereby become a partner, and is subject to Section 48-1d-603.}~~

(2) If a partnership is served with a charging order and notified of the terms of that order, then to the extent described in the order, the person to whom the charging order was issued has the right to receive any distribution that otherwise would be paid to the judgment debtor.

(3) A charging order constitutes a lien on a judgment debtor's transferable interest. The charging order lien may not be foreclosed on under this chapter or any other law.

2478 (4) ~~{ At any time before foreclosure under Subsection (3), the }~~ The partner or transferee

2479 whose transferable interest is subject to a charging order under Subsection (1) may extinguish

2480 the charging order by satisfying the judgment and filing a certified copy of the satisfaction with

2481 the court that issued the charging order.

2482 (5) ~~{ At any time before foreclosure under Subsection (3), a }~~ A partnership or one or more

2483 partners whose transferable interests are not subject to the charging order may pay to the

2484 judgment creditor the full amount due under the judgment and thereby succeed to the rights of

2485 the judgment creditor, including the charging order.

2486 (6) This chapter does not deprive any partner or transferee of the benefit of any

2487 exemption law applicable to the transferable interest of the partner or transferee.

2488 (7) ~~{ This section provides }~~ The entry of a charging order is the exclusive remedy by which
a person seeking to enforce a
2489 judgment against a partner or transferee, in the capacity of judgment creditor, may satisfy the
2490 judgment from the judgment debtor's transferable interest. No other remedy, including foreclosure on the
judgment debtor's transferable interest or a court order for directions, accounts, and inquiries that the
judgment debtor might have made, is available to the judgment creditor attempting to satisfy the
judgment from the judgment debtor's transferable interest.
(8) No creditor of a partner or transferee has any right to obtain possession of, or otherwise exercise legal
or equitable remedies with respect to, the property of the partnership.

2. Page 144, Lines 4452 through 4457:

4452 (ii) a third party that had done business with the partnership in the year before the
4453 election took effect only if the third party knows or has received a notification of the election;
4454 ~~{ and }~~
4455 (b) on and after January 1, 2016, to all third parties, but those provisions remain
4456 inapplicable to any obligation incurred while those provisions were inapplicable under
4457 Subsection (3)(a)(ii) ~~{ . }~~ ; and
(c) with respect to a charging order entered against the transferable interest of a partner or transferee
before the partnership becomes subject to this chapter the following rules apply:
(i) Section 48-1d-604 does not govern the charging order or the rights of the parties affected by the
charging order;
(ii) the judgment creditor has the same rights in respect to the charging order as existed immediately
before the partnership becomes subject to this chapter;
(iii) the court has the same power to appoint a receiver, and to make orders, directions, accounts, and
inquiries, including the power to order the foreclosure of the judgment debtor's transferable interest, as
existed immediately before the partnership becomes subject to this chapter; and
(iv) a purchaser at foreclosure sale of a judgment debtor's transferable interest has the same rights and
powers as existed immediately before the partnership becomes subject to this chapter.

3. Page 191, Lines 5888 through 5916:

5888 48-2e-703. Charging order.
5889 (1) On application by a judgment creditor of a partner or transferee, a court may enter a
5890 charging order against the transferable interest of the judgment debtor for the unsatisfied
5891 amount of the judgment. ~~{ A charging order constitutes a lien on a judgment debtor's
5892 transferable interest and, after the limited partnership has been served with the charging order,
5893 requires the limited partnership to pay over to the person to which the charging order was
5894 issued any distribution that otherwise would be paid to the judgment debtor.~~
5895 ~~—— (2) To the extent necessary to effectuate the collection of distributions pursuant to a
5896 charging order in effect under Subsection (1), the court may:~~

5897 ~~_____ (a) appoint a receiver of the distributions subject to the charging order, with the power~~
5898 ~~to make all inquiries the judgment debtor might have made; and~~
5899 ~~_____ (b) make all other orders necessary to give effect to the charging order.~~
5900 ~~_____ (3) Upon a showing that distributions under a charging order will not pay the judgment~~
5901 ~~debt within a reasonable time, the court may foreclose the lien and order the sale of the~~
5902 ~~transferable interest. The purchaser at the foreclosure sale obtains only the transferable~~
5903 ~~interest, does not thereby become a partner, and is subject to Section 48-2e-702. }~~

(2) If a limited partnership is served with a charging order and notified of the terms of the order, then to the extent described in the order, the person to whom the charging order was issued has the right to receive any distribution that otherwise would be paid to the judgement debtor.

(3) A charging order constitutes a lien on a judgment debtor's transferable interest. The charging order lien may not be foreclosed on under this chapter or any other law.

5904 (4) ~~{ At any time before foreclosure under Subsection (3), the }~~ The partner or transferee
5905 whose transferable interest is subject to a charging order under Subsection (1) may extinguish
5906 the charging order by satisfying the judgment and filing a certified copy of the satisfaction with
5907 the court that issued the charging order.

5908 (5) ~~{ At any time before foreclosure under Subsection (3), a }~~ A limited partnership or one or
5909 more partners whose transferable interests are not subject to the charging order may pay to the
5910 judgment creditor the full amount due under the judgment and thereby succeed to the rights of
5911 the judgment creditor, including the charging order.

5912 (6) This chapter does not deprive any partner or transferee of the benefit of any
5913 exemption law applicable to the transferable interest of the partner or transferee.

5914 (7) ~~{ This section provides }~~ The entry of a charging order is the exclusive remedy by which
a person seeking to enforce a
5915 judgment against a partner or transferee may, in the capacity of judgment creditor, satisfy the
5916 judgment from the judgment debtor's transferable interest. No other remedy, including foreclosure on the judgment debtor's transferable interest or a court order for directions, accounts, and inquiries that the judgment debtor might have made, is available to the judgment creditor attempting to satisfy the judgment from the judgment debtor's transferable interest.

(8) No creditor of a partnership or transferee has any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership.

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4. Page 241, Line 7450:

7450 existed immediately before July 1, 2014.

(f) With respect to a charging order entered against the transferable interest of a partner or transferee before the limited partnership becomes subject to this chapter the following rules apply:

(i) Section 48-2e-703 does not govern the charging order or the rights of the parties affected by the charging order;

the judgment creditor has the same rights in respect to the charging order as existed immediately before the limited partnership becomes subject to this chapter;

(iii) the court has the same power to appoint a receiver, and to make orders, directions, accounts, and inquiries, including the power to order foreclosure of the judgment debtor's transferable interest as existed immediately before the limited partnership becomes subject to this chapter; and

(iv) a purchaser at a foreclosure sale of a judgment debtor's transferable interest has the same rights and powers as existed immediately before the limited partnership because subject to this chapter.

5. Page 277, Line 8579 through Page 279, Line 8617:

8579 48-3a-503. Charging order.

8580 (1) On application by a judgment creditor of a member or transferee, a court may enter
8581 a charging order against the transferable interest of the judgment debtor for the unsatisfied
8582 amount of the judgment. ~~{ Except as otherwise provided in Subsection (6), a charging order
8583 constitutes a lien on a judgment debtor's transferable interest and, after the limited liability
8584 company has been served with the charging order, requires the limited liability company to pay
8585 over to the person to which the charging order was issued any distribution that otherwise would
8586 be paid to the judgment debtor.~~

8587 ~~—— (2) To the extent necessary to effectuate the collection of distributions pursuant to a
8588 charging order in effect under Subsection (1), the court may:~~

8589 ~~—— (a) appoint a receiver of the distributions subject to the charging order, with the power
8590 to make all inquiries the judgment debtor might have made; and~~

8591 ~~—— (b) make all other orders necessary to give effect to the charging order.~~

8592 ~~—— (3) Upon a showing that distributions under a charging order will not pay the judgment
8593 debt within a reasonable time, the court may foreclose the lien and order the sale of the
8594 transferable interest. Except as otherwise provided in Subsection (6), the purchaser at the
8595 foreclosure sale only obtains the transferable interest, does not thereby become a member, and
8596 is subject to Section 48-3a-502. }~~

(2) If a limited liability company is served with a charging order and notified of the terms of that order, then to the extent described in the order, the person to whom the charging order was issued has the right to receive any distribution that otherwise would be paid to the judgment debtor.

(3) A charging order constitutes a lien on a judgment debtor's transferable interest. The charging order lien may not be foreclosed on under this chapter or any other law.

8597 (4) ~~{ At any time before foreclosure under Subsection (3), the }~~ The member or transferee
8598 whose transferable interest is subject to a charging order under Subsection (1) may extinguish
8599 the charging order by satisfying the judgment and filing a certified copy of the satisfaction with
8600 the court that issued the charging order.

8601 (5) ~~{ At any time before foreclosure under Subsection (3), a }~~ A limited liability company or
8602 one or more members whose transferable interests are not subject to the charging order may
8603 pay to the judgment creditor the full amount due under the judgment and thereby succeed to the

8604 rights of the judgment creditor, including the charging order.
8605 ~~{ (6) If a court orders foreclosure of a charging order lien against the sole member of a~~
8606 ~~limited liability company:~~
8607 ~~— (a) the court shall confirm the sale;~~
8608 ~~— (b) the purchaser at the sale obtains the member's entire interest, not only the member's~~
8609 ~~transferable interest;~~
8610 ~~— (c) the purchaser thereby becomes a member; and~~
8611 ~~— (d) the person whose interest was subject to the foreclosed charging order is~~
8612 ~~dissociated as a member. }~~
8613 ~~{ (7) }~~ (6) This chapter does not deprive any member or transferee of the benefit of any
8614 exemption laws applicable to the transferable interest of the member or transferee.
8615 ~~{ (8) This section provides }~~ (7) The entry of a charging order is the exclusive remedy by
8616 which a person seeking to enforce a
8617 judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the
judgment from the judgment debtor's transferable interest. No other remedy, including foreclosure on the
judgment debtor's transferable interest or a court order of directions, accounts, and inquiries that the
judgment debtor might have made, is available to the judgment creditor attempting to satisfy the
judgment from the judgment debtor's transferable interest.
(8) No creditor of a member or transferee has any right to obtain possession of, or otherwise exercise
legal or equitable remedies with respect to, the property of the limited liability company.

6. Page 351, Lines 10849 through 10851:

10849 operating agreement; ~~{ and }~~
10850 (c) the limited liability company has perpetual duration unless otherwise stated in the
10851 limited liability company's articles of organization ~~{ . }~~ ; and
(d) with respect to a charging order entered against the transferable interest of a member or transferee
before the limited liability company becomes subject to this chapter, the following rules apply:
(i) Section 48-3a-503 does not govern the charging order or the rights of the parties affected by the
charging order;
(ii) the judgment creditor has the same rights in respect to the charging order as existed immediately
before the limited liability company becomes subject to this chapter;
(iii) the court has the same power to appoint a receiver, and to make orders, directions, accounts, and
inquiries, including the power to order the foreclosure of the judgment debtor's transferable interest, as
existed immediately before the limited liability company becomes subject to this chapter; and
(iv) a purchaser at a foreclosure sale of a judgment debtor's transferable interest has the same rights and
powers as existed immediately before the limited liability company becomes subject to this chapter.