

ARKANSAS SENATE
94th General Assembly - Regular Session, 2023
Amendment Form

Subtitle of House Bill No. 1020

TO AMEND THE UNIFORM LIMITED LIABILITY COMPANY ACT; AND TO REVISE CHARGING
ORDERS UNDER THE UNIFORM LIMITED LIABILITY COMPANY ACT.

Amendment No. 1 to House Bill 1020

Amend House Bill No. 1020 as engrossed H2/9/23 (version: 2/9/2023 9:21:31 AM):

Add Senator C. Penzo as a cosponsor of the bill

AND

Delete Senator Hill as a cosponsor of the bill

AND

Page 1, delete lines 24 through 36

AND

Page 2, delete lines 1 and 2

AND

Page 2, delete lines 20 through 26

AND

Page 2, line 31, delete "~~or transferee~~" and substitute "or transferee"

AND

Page 2, line 33, delete "member's" and substitute "transferable"

AND

Page 2, delete lines 34 through 36, and substitute the following:
"interest. ~~Except as otherwise provided in subsection (f), a~~ A charging
order constitutes a lien on a judgment debtor's transferable interest and



requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment creditor."

AND

Page 3, delete lines 1 through 3

AND

Page 4, delete lines 3 through 36, and substitute the following:

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

(c) On application to a court of competent jurisdiction by a judgment creditor of the sole member of a limited liability company against whose transferable interest a charging order was issued, and a showing to the satisfaction of the court that that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

- (1) the court shall confirm the sale;
- (2) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;
- (3) the purchaser thereby becomes a member; and
- (4) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

(d) This section:

(1)(A) Shall not operate to invalidate any provision of any written agreement between a member and a creditor, including without limitation a security agreement, assignment, or other instrument giving the creditor a security interest in, or assignment of, the transferable interest, where at the time of the written agreement, security agreement, assignment, or

other instrument was executed by the member and the creditor, the member's executing such written agreement, security agreement, assignment, or other instrument did not violate a provision of the limited liability company's certificate of organization or operating agreement.

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

(2)(A) ~~provides~~ Provides the exclusive remedy by which a ~~person seeking in the capacity of~~ judgment creditor of a member or a transferee 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 in the limited liability company, where the limited liability company has more than one (1) member.

(B)(i) In the case of a limited liability company with more than one (1) member, other remedies, including without limitation foreclosure on the member's interest, except as provided in subsection (b), 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 transferable interest in the limited liability company;

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

AND

Page 5, delete lines 1 through 17

AND

Appropriately renumber the sections of the bill

The Amendment was read the first time, rules suspended and read the second time and _____
By: Senator C. Penzo
ANS/ANS - 03-30-2023 13:44:19
ANS406

Secretary