

# House Bill 3090

Sponsored by Representatives BARTON, DAVIS

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides procedure by which judgment creditor may obtain charging order against membership interest of limited liability company member to satisfy judgment. Provides that court may order foreclosure of membership interest that is subject to charging order if judgment creditor shows that distribution under charging order will not pay judgment in reasonable time. Specifies that person subject to charging order may redeem membership interest before foreclosure and that limited liability company or member, transferable interest of which is not subject to charging order, may pay full amount of judgment and succeed to rights of judgment creditor, including rights under charging order.

## A BILL FOR AN ACT

1  
2 Relating to judgments applied to membership interests in limited liability companies; amending ORS  
3 63.001 and 63.259.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 63.001 is amended to read:

6 63.001. As used in this chapter:

7 (1) "Anniversary" means *[that]* **the** day each year **that is** exactly one or more years after:

8 (a) The date *[of filing by]* **on which** the Secretary of State *[of]* **files** the articles of organization  
9 *[in the case of]* **for** a domestic limited liability company.

10 (b) The date *[of filing by]* **on which** the Secretary of State *[of an]* **files a foreign limited li-**  
11 **ability company's** application for authority to transact business *[in the case of a foreign limited li-*  
12 *ability company]*.

13 (2) "Articles of organization" means the document described in ORS 63.047 *[for the purpose of*  
14 *forming]* **that forms** a limited liability company, including articles of organization as *[they]* **the**  
15 **articles of organization** may be amended or restated, articles of conversion and articles of merger.

16 (3) "Bankruptcy" means:

17 (a) **A member's** assignment *[by a member]* for the benefit of creditors;

18 (b) **A member's** commencement of a voluntary bankruptcy case *[by a member]*;

19 (c) Adjudication of a member as bankrupt or insolvent;

20 (d) **A member's** filing *[by a member of]* a petition or answer *[seeking]* **to seek** for the member  
21 any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief  
22 under any statute, law or rule;

23 (e) **A member's** filing *[by a member of]* an answer or other pleading *[admitting or failing]* **to**  
24 **admit or fail** to contest the material allegations of a petition filed against the member in *[any*  
25 *proceeding of this nature]* **a bankruptcy proceeding;**

26 (f) Seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator  
27 of the member or of all or any substantial part of the member's properties;

28 (g) **A** commencement of an involuntary bankruptcy case against a member that has not been

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 dismissed on or before the 120th day after the commencement of the case;

2 (h) **An** appointment, without the member’s consent, of a trustee, receiver or liquidator either of  
 3 the member or of all or any substantial part of the member’s properties that is not vacated or stayed  
 4 on or before the 90th day after **the** appointment; or

5 (i) **An** appointment described in paragraph (h) of this subsection that is not vacated on or before  
 6 the 90th day after [*expiration of*] the stay [*under*] **described in** paragraph (h) of this subsection **ex-**  
 7 **pires.**

8 (4) “Contribution” means anything of value that a person contributes to the limited liability  
 9 company as a prerequisite for or in connection with membership, including cash, property or ser-  
 10 vices rendered or a promissory note or other binding obligation to contribute cash or property or  
 11 to perform services.

12 (5) “Corporation” or “domestic corporation” means a corporation for profit **that is** incorporated  
 13 under ORS chapter 60.

14 (6) “Distribution” means a direct or indirect transfer of money or other property, except of a  
 15 limited liability company’s own interests, or **a limited liability company’s** incurrence of indebt-  
 16 edness [*by a limited liability company*] to or for the benefit of the limited liability company’s members  
 17 in respect of a member’s interests[. *A distribution may be*], **whether** in the form of a declaration or  
 18 payment of profits, a purchase, retirement or other acquisition of interests, a distribution of indebt-  
 19 edness, or otherwise.

20 (7) “Domestic nonprofit corporation” means a corporation not for profit **that is** incorporated  
 21 under ORS chapter 65.

22 (8) “Domestic professional corporation” means a corporation **that is** organized under ORS  
 23 chapter 58 for the purpose of rendering professional services and for the purposes provided under  
 24 ORS chapter 58.

25 (9) “Entity” [*includes*] **means** a domestic or foreign limited liability company, corporation, pro-  
 26 fessional corporation, foreign corporation, domestic or foreign nonprofit corporation, domestic or  
 27 foreign cooperative corporation, profit or nonprofit unincorporated association, business trust, do-  
 28 mestic or foreign general or limited partnership, two or more persons [*having*] **that have** a joint or  
 29 common economic interest, [*any*] **a** state, the United States, a federally recognized Native American  
 30 or American Indian tribal government or [*any*] **a** foreign government.

31 (10) “Foreign corporation” means a corporation for profit **that is** incorporated under laws other  
 32 than the laws of this state.

33 (11) “Foreign limited liability company” means an entity that is an unincorporated association  
 34 organized under laws other than the laws of this state and that is organized under a statute under  
 35 which an association may be formed that affords to each of the entity’s members limited liability  
 36 with respect to the liabilities of the entity.

37 (12) “Foreign limited partnership” means a limited partnership formed under laws other than the  
 38 laws of this state [*and having as partners*] **that has** one or more general partners and one or more  
 39 limited partners.

40 (13) “Foreign nonprofit corporation” means a corporation not for profit **that is** organized under  
 41 laws other than the laws of this state.

42 (14) “Foreign professional corporation” means a professional corporation **that is** organized un-  
 43 der laws other than the laws of this state.

44 (15) “Incompetency” means the entry of a judgment by a court of competent jurisdiction adju-  
 45 dicating the member incompetent to manage the member’s person or estate.

1 (16) “Individual” means a natural person.

2 (17) “Limited liability company” or “domestic limited liability company” means an entity that  
 3 is an unincorporated association *[having]* **that has** one or more members *[that]* **and** is organized  
 4 under this chapter.

5 (18) “Limited partnership” or “domestic limited partnership” means a partnership formed by two  
 6 or more persons under ORS chapter 70 *[and having]* **that has** one or more general partners and one  
 7 or more limited partners.

8 (19) “Manager” *[or “managers”]* means a person *[or persons]*, who **does not** need *[not]* **to** be  
 9 *[members]* **a member**, *[designated by]* **that** the members of a manager-managed limited liability  
 10 company **designate** to manage the limited liability company’s business and affairs.

11 (20) “Manager-managed limited liability company” means a limited liability company that is  
 12 designated as a manager-managed limited liability company in the limited liability company’s articles  
 13 of organization or *[whose]* **the** articles of organization **of which** otherwise expressly provide that  
 14 *[the limited liability company will be managed by]* a manager or managers **will manage the limited**  
 15 **liability company**.

16 (21)(a) “Member” *[or “members”]* means a person *[or persons]* with both an ownership interest  
 17 in a limited liability company and all the rights and obligations of a member specified under this  
 18 chapter.

19 (b) “Member” does not include an assignee of an ownership interest who has not also acquired  
 20 the voting and other rights appurtenant to membership.

21 (22) “Member-managed limited liability company” means a limited liability company other than  
 22 a manager-managed limited liability company.

23 (23) “Membership interest” *[or “interest”]* means a member’s collective rights in a limited liabil-  
 24 ity company, including the member’s share of profits and losses of the limited liability company, the  
 25 right to receive distributions of the limited liability company’s assets and any right to vote or partic-  
 26 ipate in management.

27 (24) “Office,” when used to refer to the administrative unit directed by the Secretary of State,  
 28 means the office of the Secretary of State.

29 (25) “Operating agreement” means *[any]* **a** valid agreement, written or oral, of the member or  
 30 members as to the affairs of a limited liability company and the conduct of the limited liability  
 31 company’s business.

32 (26) “Organizer” means one of the signers of the initial articles of organization.

33 *[(27) “Party” includes an individual who was, is or is threatened to be made a named defendant*  
 34 *or respondent in a proceeding.]*

35 *[(28)]* (27) “Person” means an individual or entity.

36 *[(29)]* (28) “Proceeding” means any threatened, pending or completed action, suit or proceeding  
 37 whether civil, criminal, administrative or investigatory and whether formal or informal.

38 *[(30)]* (29) “State,” when referring to a part of the United States, *[includes]* **means** a state,  
 39 commonwealth, territory or insular possession of the United States and the agencies and govern-  
 40 mental subdivisions of the state, commonwealth, territory or insular possession.

41 (30) “Transferable interest” means a right, originally associated with a person’s capacity  
 42 as a member, to receive distributions from a limited liability company in accordance with the  
 43 operating agreement, whether or not the person remains a member or continues to own any  
 44 part of the right.

45 (31) “United States” includes a district, authority, bureau, commission, department or any other

1 agency of the United States.

2 **SECTION 2.** ORS 63.259 is amended to read:

3 63.259. [*On application to a court of competent jurisdiction by any judgment creditor of a member,*  
 4 *the court may charge the membership interest of the member with payment of the unsatisfied amount*  
 5 *of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of*  
 6 *an assignee of the membership interest. This chapter shall not deprive any member of the benefit of any*  
 7 *exemption laws applicable to the member's membership interest.*]

8 **(1) After a judgment creditor of a member or transferee makes an application, a court**  
 9 **may enter a charging order against the transferable interest of a judgment debtor for the**  
 10 **unsatisfied amount of a judgment. A charging order constitutes a lien on the judgment**  
 11 **debtor's transferable interest and requires a limited liability company to pay to the person**  
 12 **on behalf of which the court issued the charging order any distribution that the limited li-**  
 13 **ability company would otherwise pay to the judgment debtor.**

14 **(2) To the extent necessary to enable a person on behalf of which a court has issued a**  
 15 **charging order under subsection (1) of this section to collect a distribution, the court may:**

16 **(a) Appoint a receiver for the distribution that is subject to the charging order and give**  
 17 **the receiver the power to make all inquiries the judgment debtor might make; and**

18 **(b) Make any other order the court deems necessary to give effect to the charging order.**

19 **(3) If a judgment creditor shows that distributions under a charging order will not pay**  
 20 **a judgment debt within a reasonable time, a court may foreclose the lien and order the sale**  
 21 **of the transferable interest. A purchaser at the foreclosure sale obtains only the transferable**  
 22 **interest, does not as a result of the purchase become a member of the limited liability com-**  
 23 **pany and is subject to ORS 63.249.**

24 **(4) At any time before a foreclosure under subsection (3) of this section, the member or**  
 25 **transferee whose transferable interest is subject to a charging order under subsection (1)**  
 26 **of this section may extinguish the charging order by satisfying the judgment and filing a**  
 27 **certified copy of the satisfaction with the court that issued the charging order.**

28 **(5) At any time before a foreclosure under subsection (3) of this section, a limited liability**  
 29 **company or a member of the limited liability company, the transferable interest of which is**  
 30 **not subject to the charging order, may pay to the judgment creditor the full amount due**  
 31 **under the judgment and with the payment succeed to the judgment creditor's rights, in-**  
 32 **cluding rights under the charging order.**

33 **(6) This section does not deprive a member or transferee of the benefit of an exemption**  
 34 **law that applies to the member's or transferee's transferable interest.**

35 **(7) This section is the exclusive remedy by which a person may, in the capacity of a**  
 36 **judgment creditor, satisfy a judgment against a member or transferee from the judgment**  
 37 **debtor's transferable interest.**

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