

HB 253

2011

1 A bill to be entitled

2 An act relating to limited liability companies; amending
3 s. 608.433, F.S.; providing that a charging order against
4 a member's transferable interest is the sole and exclusive
5 remedy available to enforce a judgment creditor's
6 unsatisfied judgment against a member or member's
7 transferee; providing an exception for enforcing a
8 judgment creditor's unsatisfied judgment against a
9 judgment debtor or assignee of the judgment debtor of a
10 single-member limited liability company under certain
11 circumstances; providing legislative intent; providing for
12 retroactive application; providing an effective date.

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14 WHEREAS, on June 24, 2010, the Florida Supreme Court held
15 in *Olmstead v. Federal Trade Commission* (No. SC08-1009),
16 reported at 44 So.3d 76, 2010-1 Trade Cases P 77,079, 35 Fla. L.
17 Weekly S357, that a charging order is not the exclusive remedy
18 available to a creditor holding a judgment against the sole
19 member of a Florida single-member limited liability company
20 (LLC), and

21 WHEREAS, a charging order represents a lien entitling a
22 judgment creditor to receive distributions from the LLC or the
23 partnership that otherwise would be payable to the member or
24 partner who is the judgment debtor, and

25 WHEREAS, the dissenting members of the Court in *Olmstead*
26 expressed a concern that the majority's holding is not limited
27 to a single-member LLC and a desire that the Legislature clarify
28 the law in this area, and

HB 253

2011

29 WHEREAS, the Legislature finds that the uncertainty of the
30 breadth of the Court's holding in *Olmstead* may persuade
31 businesses and investors located in Florida to organize LLCs
32 under the law in other jurisdictions where a charging order is
33 the exclusive remedy available to a judgment creditor of a
34 member of a multimember LLC, and

35 WHEREAS, the Legislature further finds it necessary to
36 amend s. 608.433, Florida Statutes, to remediate the potential
37 effect of the holding in *Olmstead* and to clarify that the
38 current law does not extend to a member of a multimember LLC
39 organized under Florida law, NOW, THEREFORE,

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41 Be It Enacted by the Legislature of the State of Florida:

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43 Section 1. Section 608.433, Florida Statutes, is amended
44 to read:

45 608.433 Right of assignee to become member.—

46 (1) Unless otherwise provided in the articles of
47 organization or operating agreement, an assignee of a limited
48 liability company interest may become a member only if all
49 members other than the member assigning the interest consent.

50 (2) An assignee who has become a member has, to the extent
51 assigned, the rights and powers, and is subject to the
52 restrictions and liabilities, of the assigning member under the
53 articles of organization, the operating agreement, and this
54 chapter. An assignee who becomes a member also is liable for the
55 obligations of the assignee's assignor to make and return
56 contributions as provided in s. 608.4211 and wrongful

57 distributions as provided in s. 608.428. However, the assignee
58 is not obligated for liabilities which are unknown to the
59 assignee at the time the assignee became a member and which
60 could not be ascertained from the articles of organization or
61 the operating agreement.

62 (3) If an assignee of a limited liability company interest
63 becomes a member, the assignor is not released from liability to
64 the limited liability company under ss. 608.4211, 608.4228, and
65 608.426.

66 (4) (a) On application to a court of competent jurisdiction
67 by any judgment creditor of a member or a member's transferee,
68 the court may enter a charging order against the transferable
69 interest of the judgment debtor for ~~charge the limited liability~~
70 ~~company membership interest of the member with payment of the~~
71 unsatisfied amount of the judgment ~~with interest.~~

72 (b) To the extent so charged, the judgment creditor has
73 only the rights of an assignee of the transferable ~~such~~
74 interest.

75 (c) This chapter does not deprive any member of the
76 benefit of any exemption laws applicable to the member's
77 interest.

78 (5) Except as provided in subsection (6), this section
79 provides the sole and exclusive remedy by which a person seeking
80 to enforce a judgment against a member or member's transferee
81 may, in the capacity of a judgment creditor, satisfy the
82 judgment from the judgment debtor's transferable interest in the
83 limited liability company. Foreclosure on the judgment debtor's
84 interest, and all other remedies to give effect to the charging

HB 253

2011

85 order, including, but not limited to, the appointment of a
86 receiver or a court order for directions, accounts, and
87 inquiries that the judgment debtor might have made, are not
88 available to the judgment creditor attempting to satisfy the
89 judgment out of the judgment debtor's transferable interest and
90 may not be ordered by a court.

91 (6) In the case of a limited liability company having only
92 one member, this section does not provide the exclusive remedy
93 of a judgment creditor seeking to enforce a judgment against a
94 judgment debtor who is the sole member of a limited liability
95 company or the assignee of the sole member if the judgment
96 creditor establishes to the satisfaction of a court of competent
97 jurisdiction that distributions under a charging order will not
98 satisfy the judgment within a reasonable time.

99 Section 2. The amendment to s. 608.433, Florida Statutes,
100 made by this act is intended by the Legislature to be clarifying
101 and remedial in nature and shall apply retroactively.

102 Section 3. This act shall take effect upon becoming a law.