

By the Committee on Banking and Insurance; and Senator Simmons

597-04913-11

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1                   A bill to be entitled  
2           An act relating to limited liability companies;  
3           amending s. 608.433, F.S.; providing that a charging  
4           order against a member's limited liability company  
5           interest is the sole and exclusive remedy available to  
6           enforce a judgment creditor's unsatisfied judgment  
7           against a member or member's assignee; providing an  
8           exception for enforcing a judgment creditor's  
9           unsatisfied judgment against a judgment debtor or  
10          assignee of the judgment debtor of a single-member  
11          limited liability company under certain circumstances;  
12          providing that, in the case of a multimember limited  
13          liability company, certain remedies are unavailable to  
14          a judgment creditor attempting to satisfy a judgment;  
15          prohibiting a court from ordering such remedies;  
16          providing for construction relating to secured  
17          creditor rights, specified principles of law and  
18          equity, and continuing enforcement jurisdiction of the  
19          court; providing legislative intent; providing for  
20          retroactive application; providing an effective date.

21  
22          WHEREAS, on June 24, 2010, the Florida Supreme Court held  
23          in *Olmstead v. Federal Trade Commission* (No. SC08-1009),  
24          reported at 44 So.3d 76, 2010-1 Trade Cases P 77,079, 35 Fla. L.  
25          Weekly S357, that a charging order is not the exclusive remedy  
26          available to a creditor holding a judgment against the sole  
27          member of a Florida single-member limited liability company  
28          (LLC), and

29          WHEREAS, a charging order represents a lien entitling a

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30 judgment creditor to receive distributions from the LLC or the  
31 partnership that otherwise would be payable to the member or  
32 partner who is the judgment debtor, and

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

37 WHEREAS, the Legislature finds that the uncertainty of the  
38 breadth of the Court's holding in *Olmstead* may persuade  
39 businesses and investors located in Florida to organize LLCs  
40 under the law in other jurisdictions where a charging order is  
41 the exclusive remedy available to a judgment creditor of a  
42 member of a multimember LLC, and

43 WHEREAS, the Legislature further finds it necessary to  
44 amend s. 608.433, Florida Statutes, to remediate the potential  
45 effect of the holding in *Olmstead* and to clarify that the  
46 current law does not extend to a member of a multimember LLC  
47 organized under Florida law and to provide procedures for  
48 application of the holding in *Olmstead* to a member of a single-  
49 member LLC organized under Florida law, NOW, THEREFORE,

50  
51 Be It Enacted by the Legislature of the State of Florida:

52  
53 Section 1. Section 608.433, Florida Statutes, is amended to  
54 read:

55 608.433 Right of assignee to become member.—

56 (1) Unless otherwise provided in the articles of  
57 organization or operating agreement, an assignee of a limited  
58 liability company interest may become a member only if all

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59 members other than the member assigning the interest consent.

60 (2) An assignee who has become a member has, to the extent  
61 assigned, the rights and powers, and is subject to the  
62 restrictions and liabilities, of the assigning member under the  
63 articles of organization, the operating agreement, and this  
64 chapter. An assignee who becomes a member also is liable for the  
65 obligations of the assignee's assignor to make and return  
66 contributions as provided in s. 608.4211 and wrongful  
67 distributions as provided in s. 608.428. However, the assignee  
68 is not obligated for liabilities which are unknown to the  
69 assignee at the time the assignee became a member and which  
70 could not be ascertained from the articles of organization or  
71 the operating agreement.

72 (3) If an assignee of a limited liability company interest  
73 becomes a member, the assignor is not released from liability to  
74 the limited liability company under s. ss. 608.4211, s.  
75 608.4228, or s. and 608.426.

76 (4) (a) On application to a court of competent jurisdiction  
77 by any judgment creditor of a member or a member's assignee, the  
78 court may enter a charging order against the limited liability  
79 company interest of the judgment debtor or assignee rights for  
80 charge the limited liability company membership interest of the  
81 member with payment of the unsatisfied amount of the judgment  
82 plus with interest.

83 (b) A charging order constitutes a lien on the judgment  
84 debtor's limited liability company interest or assignee rights.  
85 Under a charging order ~~To the extent so charged~~, the judgment  
86 creditor has only the rights of an assignee of a limited  
87 liability company interest to receive any distribution or

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88 distributions to which the judgment debtor would otherwise have  
89 been entitled from the limited liability company, to the extent  
90 of the judgment, including ~~such~~ interest.

91 (c) This chapter does not deprive any member or member's  
92 assignee of the benefit of any exemption ~~law laws~~ applicable to  
93 the member's limited liability company interest or the  
94 assignee's rights to distributions from the limited liability  
95 company.

96 (5) Except as provided in subsections (6) and (7), a  
97 charging order is the sole and exclusive remedy by which a  
98 judgment creditor of a member or member's assignee may satisfy a  
99 judgment from the judgment debtor's interest in a limited  
100 liability company or rights to distributions from the limited  
101 liability company.

102 (6) In the case of a limited liability company having only  
103 one member, if a judgment creditor of a member or member's  
104 assignee establishes to the satisfaction of a court of competent  
105 jurisdiction that distributions under a charging order will not  
106 satisfy the judgment within a reasonable time, a charging order  
107 is not the sole and exclusive remedy by which the judgment  
108 creditor may satisfy the judgment against a judgment debtor who  
109 is the sole member of a limited liability company or the  
110 assignee of the sole member, and upon such showing, the court  
111 may order the sale of that interest in the limited liability  
112 company pursuant to a foreclosure sale. A judgment creditor may  
113 make a showing to the court that distributions under a charging  
114 order will not satisfy the judgment within a reasonable time at  
115 any time after the entry of the judgment and may do so at the  
116 same time that the judgment creditor applies for the entry of a

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117 charging order.

118 (7) In the case of a limited liability company having only  
119 one member, if the court orders foreclosure sale of a judgment  
120 debtor's interest in the limited liability company or of a  
121 charging order lien against the sole member of the limited  
122 liability company pursuant to subsection (6):

123 (a) The purchaser at the court-ordered foreclosure sale  
124 obtains the member's entire limited liability company interest,  
125 not merely the rights of an assignee;

126 (b) The purchaser at the sale becomes the member of the  
127 limited liability company; and

128 (c) The person whose limited liability company interest is  
129 sold pursuant to the foreclosure sale or is the subject of the  
130 foreclosed charging order ceases to be a member of the limited  
131 liability company.

132 (8) In the case of a limited liability company having more  
133 than one member, the remedy of foreclosure on a judgment  
134 debtor's interest in such limited liability company or against  
135 rights to distribution from such limited liability company is  
136 not available to a judgment creditor attempting to satisfy the  
137 judgment and may not be ordered by a court.

138 (9) This section does not limit:

139 (a) The rights of a creditor that has been granted a  
140 consensual security interest in a limited liability company  
141 interest to pursue the remedies available to such secured  
142 creditor under other law applicable to secured creditors;

143 (b) The principles of law and equity which affect  
144 fraudulent transfers;

145 (c) The availability of the equitable principles of alter

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146 ego, equitable lien, or constructive trust, or other equitable  
147 principles not inconsistent with this section; or

148 (d) The continuing jurisdiction of the court to enforce its  
149 charging order in a manner consistent with this section.

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

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