

BILL ANALYSIS

Senate Research Center

S.B. 2314
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Limited liability companies (LLCs) are designed to protect an individual's business assets should they avail themselves of the opportunity to create an LLC. There are two types of LLCs—single-member LLCs (where one person owns the business) and multi-member LLCs (where more than one individual owns the company). If the LLC is sued, the plaintiff may access the business assets but cannot get outside the LLC to collect against a person's personal assets (at least, that is the intent). On the other hand, if a person is sued for a personal matter unrelated to the LLC's operations, charging order protection is in place to ensure the person's business interest is not taken in the collection of personal debt.

In Texas, a charging order is the only legal remedy a personal creditor of a Texas LLC member can use to get at a member/debtor's LLC ownership interest in the LLC. Creditors with a charging order in Texas only obtain the owner-debtor's financial rights and cannot participate in the LLC's management. Since a creditor with a charging order cannot participate in the LLC's management, it cannot order the LLC to make a distribution or that the LLC be sold to pay off the debt. The rationale behind the exclusivity of the charging order remedy is to avoid undue disruption to the operation of the entity's business. The creditor involved has a judgment against a member, not the entity itself, so the entity should not (at least in theory) be adversely affected. This ensures that a person's business is not interrupted to satisfy a debt unrelated to the business, and a person does not lose their livelihood and business assets they have worked hard to build.

Recent Texas cases have arguably eroded this protection for single-member limited liability companies. See, e.g., *Heckert v. Heckert*, No. 02-16-00213-CV, 2017 WL 5184840 (Tex. App.—Fort Worth Nov. 9, 2017, no pet. h.). S.B. 2314 amends Section 101.112, Business Organizations Code, to ensure that a charging order remains the sole and exclusive remedy against a person who is the sole member of a single-member LLC, just like it protects a member of a multi-member LLC. This will certainly help protect hard-working small business owners throughout the state of Texas.

S.B. 2314 amends current law relating to a membership interest in a limited liability company subject to a charging order.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 101.112, Business Organizations Code, by adding Subsection (g) to provide that Section 101.112 (Member's Membership Interest Subject to Charging Order) applies to both single-member limited liability companies and multiple-member limited liability companies.

SECTION 2. Provides that the change in law made by this Act is intended only to clarify existing law with respect to the applicability of charging orders to limited liability companies.

SECTION 3. Effective date: September 1, 2023.