

A bill for an act

relating to business organizations; proposing technical amendments to the Business Corporations Act, the Limited Liability Company Act, and the Uniform Limited Partnership Act of 2001; authorizing the formation of nonprofit limited liability companies; amending Minnesota Statutes 2006, sections 302A.011, subdivisions 17, 50; 302A.111, subdivisions 2, 3, 4; 302A.231, subdivisions 2, 3; 302A.237; 302A.241, subdivision 1; 302A.255, subdivision 1; 302A.449, subdivision 3; 302A.471, subdivision 3; 302A.521, subdivision 1; 302A.553, subdivision 1; 302A.701; 302A.721; 321.1206; 322B.03, subdivisions 20, 32, by adding a subdivision; 322B.10; 322B.11; 322B.35, subdivision 3; 322B.363, subdivision 3; 322B.643, subdivisions 2, 3; 322B.66, subdivision 1; 322B.666, subdivision 1; 322B.699, subdivision 1; 322B.78; 322B.80, subdivision 1; 322B.806; 322B.90, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 322B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

TECHNICAL AMENDMENTS TO THE BUSINESS CORPORATIONS ACT

Section 1. Minnesota Statutes 2006, section 302A.011, subdivision 17, is amended to read:

Subd. 17. **Notice.** (a) "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation.

(b) In all other cases, "notice" is given to a person when:

(1) mailed to the person at an address designated by the person or at the last known address of the person, or ~~when~~

(2) deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly

as practicable, to the person at an address designated by the person or at the last known address of the person, or

(3) communicated to the person orally, or ~~when~~

(4) handed to the person, or ~~when~~

(5) left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.

(c) Notice is also given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

(d) Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice by deposit for delivery is given when deposited for delivery as provided in paragraph (b), clause (2), after having made sufficient arrangements for payment by the sender.

(e) Notice is deemed received when it is given.

Sec. 2. Minnesota Statutes 2006, section 302A.011, subdivision 50, is amended to read:

Subd. 50. **Market value.** "Market value," when used in reference to shares or other property of any corporation, means the following:

(a) In the case of shares, the average closing sale price of a share during the 30 trading days immediately preceding the date in question or, with respect to the references in section 302A.553, subdivision 3, if a person or persons selling the shares have commenced a tender offer or have announced an intention to seek control of the corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement, in either case:

(1) on the composite tape for New York Stock Exchange listed shares; or

(2) if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934, which may include the NASDAQ Stock Market, on which the shares are listed; or

(3) if the shares are not listed on any such exchange, on ~~the Nasdaq Stock Market, or~~

~~(4) if the shares are not quoted on the Nasdaq Stock Market, or any system then~~
in use.

If no quotation under clauses (1) through ~~(4)~~ (3) is available, then the market value is the fair market value on the date in question of the shares as determined in good faith by the board of the corporation.

(b) In the case of property other than cash or shares, the fair market value of the property on the date in question as determined in good faith by the board of the corporation.

Sec. 3. Minnesota Statutes 2006, section 302A.111, subdivision 2, is amended to read:

Subd. 2. **Statutory provisions that may be modified only in articles or in a shareholder control agreement.** The following provisions govern a corporation unless modified in the articles or in a shareholder control agreement under section 302A.457:

- (a) a corporation has general business purposes (section 302A.101);
- (b) a corporation has perpetual existence and certain powers (section 302A.161);
- (c) the power to adopt, amend, or repeal the bylaws is vested in the board (section 302A.181);
- (d) a corporation must allow cumulative voting for directors (section 302A.215, subdivision 2);
- (e) the affirmative vote of a majority of directors present is required for an action of the board (section 302A.237);
- (f) a written action by the board taken without a meeting must be signed by all directors (section 302A.239);
- (g) the board may authorize the issuance of securities and rights to purchase securities (section 302A.401, subdivision 1);
- (h) all shares are common shares entitled to vote and are of one class and one series (section 302A.401, subdivision 2, clauses (a) and (b));
- (i) all shares have equal rights and preferences in all matters not otherwise provided for by the board (section 302A.401, subdivision 2, clause (b));
- (j) the par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes (section 302A.401, subdivision 2, clause (c));
- (k) the board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends, divisions, or combinations, and determine the value of nonmonetary consideration (section 302A.405, subdivision 1);
- (l) shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends, divisions, or combinations, unless authorized by a

majority of the voting power of the shares of the same class or series as the shares to be issued (section 302A.405, subdivision 1);

(m) a corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board (section 302A.409);

(n) a shareholder has certain preemptive rights, unless otherwise provided by the board (section 302A.413);

(o) the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a plurality of the votes cast (section 302A.215, subdivision 1) or a majority of the voting power of all shares entitled to vote (section 302A.437, subdivision 1);

(p) shares of a corporation acquired by the corporation may be reissued (section 302A.553, subdivision 1);

(q) each share has one vote unless otherwise provided in the terms of the share (section 302A.445, subdivision 3);

(r) a corporation may issue shares for a consideration less than the par value, if any, of the shares (section 302A.405, subdivision 2);

(s) the board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval (section 302A.402); and

(t) a written action of shareholders must be signed by all shareholders (section 302A.441).

Sec. 4. Minnesota Statutes 2006, section 302A.111, subdivision 3, is amended to read:

Subd. 3. **Statutory provisions that may be modified ~~either~~ in articles, in a shareholder control agreement, or in bylaws.** The following provisions govern a corporation unless modified ~~either~~ in the articles, in a shareholder control agreement under section 302A.457, or in the bylaws:

(a) directors serve for an indefinite term that expires at the next regular meeting of shareholders (section 302A.207);

(b) the compensation of directors is fixed by the board (section 302A.211);

(c) a certain method must be used for removal of directors (section 302A.223);

(d) a certain method must be used for filling board vacancies (section 302A.225);

(e) if the board fails to select a place for a board meeting, it must be held at the principal executive office (section 302A.231, subdivision 1);

(f) the notice of a board meeting need not state the purpose of the meeting (section 302A.231, subdivision 3);

(g) a majority of the board is a quorum for a board meeting (section 302A.235);

(h) a committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present (section 302A.241, subdivision 2), and a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee (section 302A.241, subdivision 2a);

(i) the board may establish a special litigation committee (section 302A.241);

(j) the chief executive officer and chief financial officer have specified duties, until the board determines otherwise (section 302A.305);

(k) officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so (section 302A.351);

(l) the corporation may establish uncertificated shares (section 302A.417, subdivision 7);

(m) regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions (section 302A.431);

(n) in all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten-days notice is required for a meeting of shareholders (section 302A.435, subdivision 2);

(o) the number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting (section 302A.443);

(p) the board may fix a date up to 60 days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting (section 302A.445, subdivision 1);

(q) indemnification of certain persons is required (section 302A.521); and

(r) the board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement (section 302A.551, subdivision 1).

Sec. 5. Minnesota Statutes 2006, section 302A.111, subdivision 4, is amended to read:

Subd. 4. **Optional provisions; specific subjects.** The provisions in paragraphs (a), (g), (q), (r), and (u) may be included in the articles.

The provisions in paragraphs (b) to (f), (h) to (p), (s), and (t) may be included either in the articles or the bylaws:

(a) the members of the first board may be named in the articles (section 302A.201, subdivision 1);

- 6.1 (b) a manner for increasing or decreasing the number of directors may be provided
- 6.2 (section 302A.203);
- 6.3 (c) additional qualifications for directors may be imposed (section 302A.205);
- 6.4 (d) directors may be classified (section 302A.213);
- 6.5 (e) the day or date, time, and place of board meetings may be fixed (section
- 6.6 302A.231, subdivision 1);
- 6.7 (f) absent directors may be permitted to give written consent or opposition to
- 6.8 a proposal (section 302A.233);
- 6.9 (g) a larger than majority vote may be required for board action (section 302A.237);
- 6.10 (h) authority to sign and deliver certain documents may be delegated to an officer
- 6.11 or agent of the corporation other than the chief executive officer (section 302A.305,
- 6.12 subdivision 2);
- 6.13 (i) additional officers may be designated (section 302A.311);
- 6.14 (j) additional powers, rights, duties, and responsibilities may be given to officers
- 6.15 (section 302A.311);
- 6.16 (k) a method for filling vacant offices may be specified (section 302A.341,
- 6.17 subdivision 3);
- 6.18 (l) a certain officer or agent may be authorized to sign share certificates (section
- 6.19 302A.417, subdivision 2);
- 6.20 (m) the transfer or registration of transfer of securities may be restricted (section
- 6.21 302A.429);
- 6.22 (n) the day or date, time, and place of regular shareholder meetings may be fixed
- 6.23 (section 302A.431, subdivision 3);
- 6.24 (o) certain persons may be authorized to call special meetings of shareholders
- 6.25 (section 302A.433, subdivision 1);
- 6.26 (p) notices of shareholder meetings may be required to contain certain information
- 6.27 (section 302A.435, subdivision 3);
- 6.28 (q) a larger than majority vote may be required for shareholder action (section
- 6.29 302A.437);
- 6.30 (r) voting rights may be granted in or pursuant to the articles to persons who are not
- 6.31 shareholders (section 302A.445, subdivision 4);
- 6.32 (s) corporate actions giving rise to dissenter rights may be designated (section
- 6.33 302A.471, subdivision 1, clause (e));
- 6.34 (t) the rights and priorities of persons to receive distributions may be established
- 6.35 (section 302A.551); and

(u) a director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles (section 302A.251, subdivision 4).

Nothing in this subdivision limits the right of the board, by resolution, to take an action that may be included in the bylaws under this subdivision without including it in the bylaws, unless it is required to be included in the bylaws by another provision of this chapter. Nothing in this subdivision limits the permissible scope of a shareholder control agreement under section 302A.457.

Sec. 6. Minnesota Statutes 2006, section 302A.231, subdivision 2, is amended to read:

Subd. 2. **Meetings solely by means of remote communication.** Any meeting among directors may be conducted solely by one or more means of remote communication through which all of the directors may participate with each other during the meeting, if the same notice is given of the meeting required by subdivision 4, and if the number of directors participating in the meeting is sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

Sec. 7. Minnesota Statutes 2006, section 302A.231, subdivision 3, is amended to read:

Subd. 3. **Participation in meetings by means of remote communication.** A director may participate in a board meeting by means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case through which the director, other directors so participating, and all directors physically present at the meeting may participate with each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

Sec. 8. Minnesota Statutes 2006, section 302A.237, is amended to read:

302A.237 ACT OF THE BOARD.

Subdivision 1. **Majority required.** The board shall take action by the affirmative vote of the greater of (1) a majority of directors present at a duly held meeting at the time the action is taken, or (2) a majority of the minimum proportion or number of directors that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles shall control.

Subd. 2. **Voting power.** The articles of a domestic corporation that is not a publicly held corporation may confer upon one or more directors voting powers greater than or less

than those of other directors. After the adoption of the initial articles, an amendment to the articles to confer upon one or more directors voting powers greater than or less than those of other directors requires the approval of all of the shareholders entitled to vote on the amendment. If the articles provide that any director has more or less than one vote on any matter, every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the voting power of the directors. Unless otherwise provided in the articles, the bylaws, or the resolution establishing the committee or the subcommittee, any such provision conferring greater or lesser voting power applies to voting in a committee or subcommittee.

Sec. 9. Minnesota Statutes 2006, section 302A.241, subdivision 1, is amended to read:

Subdivision 1. **Generally.** A resolution approved by the affirmative vote of a majority of the ~~board~~ directors currently holding office may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued. Committees other than special litigation committees and committees formed pursuant to section 302A.673, subdivision 1, paragraph (d), are subject at all times to the direction and control of the board.

Sec. 10. Minnesota Statutes 2006, section 302A.255, subdivision 1, is amended to read:

Subdivision 1. **Conflict; procedure when conflict arises.** A contract or other transaction between a corporation and one or more of its directors, or between a corporation and an organization in or of which one or more of its directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other organizations are parties or because the director or directors are present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(a) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;

(b) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith

by (1) the holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote;

(c) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the ~~board or committee~~ directors or committee members currently holding office, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

(d) The contract or transaction is a distribution described in section 302A.551, subdivision 1, or a merger or exchange described in section 302A.601, subdivision 1 or 2.

Sec. 11. Minnesota Statutes 2006, section 302A.449, subdivision 3, is amended to read:

Subd. 3. **Termination.** An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with an officer of the corporation, or by filing a new written appointment of a proxy₂ signed by the shareholder, with an officer of the corporation, or by telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the shareholder, of a new appointment of a proxy with the corporation or the corporation's duly authorized agent. Termination in ~~either any such~~ manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation or when the telephonic transmission or authenticated electronic communication is received by the corporation or the corporation's duly authorized agent. The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the new appointment was authorized by the shareholder.

Sec. 12. Minnesota Statutes 2006, section 302A.471, subdivision 3, is amended to read:

Subd. 3. **Rights not to apply.** (a) Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to a shareholder of (1) the surviving corporation in a merger with respect to shares of the shareholder that are not entitled to be voted on the merger and are not canceled or exchanged in the merger or (2) the corporation whose shares will be acquired by the acquiring organization in a plan of exchange with respect to shares

of the shareholder that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

(b) If a date is fixed according to section 302A.445, subdivision 1, for the determination of shareholders entitled to receive notice of and to vote on an action described in subdivision 1, only shareholders as of the date fixed, and beneficial owners as of the date fixed who hold through shareholders, as provided in subdivision 2, may exercise dissenters' rights.

(c) Notwithstanding subdivision 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 302A.621, is limited in accordance with the following provisions:

(1) The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York Stock Exchange ~~or~~₂ the American Stock Exchange ~~or designated as a national market security on~~₂ the ~~Nasdaq Stock~~ NASDAQ Global Market, or the NASDAQ Global Select Market.

(2) The applicability of clause (1) is determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subdivision 1; or

(ii) the day before the effective date of corporate action described in subdivision 1 if there is no meeting of shareholders.

(3) Clause (1) is not applicable, and the right to obtain payment under this section is available pursuant to subdivision 1, for the holders of any class or series of shares who are required by the terms of the corporate action described in subdivision 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of a domestic or foreign corporation, or any other ownership interest of any other organization, that satisfies the standards set forth in clause (1) at the time the corporate action becomes effective.

Sec. 13. Minnesota Statutes 2006, section 302A.521, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(c) "Official capacity" means (1) with respect to a director, the position of director in a corporation, (2) with respect to a person other than a director, the elective or

11.1 appointive office or position held by an officer, member of a committee of the board, or
11.2 the employment relationship undertaken by an employee of the corporation, and (3) with
11.3 respect to a director, officer, or employee of the corporation who, while a director, officer,
11.4 or employee of the corporation, is or was serving at the request of the corporation or whose
11.5 duties in that position involve or involved service as a director, officer, partner, trustee,
11.6 governor, manager, employee, or agent of another organization or employee benefit plan,
11.7 the position of that person as a director, officer, partner, trustee, governor, manager,
11.8 employee, or agent, as the case may be, of the other organization or employee benefit plan.

11.9 (d) "Proceeding" means a threatened, pending, or completed civil, criminal,
11.10 administrative, arbitration, or investigative proceeding, including a proceeding by or in the
11.11 right of the corporation.

11.12 (e) "Special legal counsel" means counsel who has not in the preceding five years
11.13 (1) represented the corporation or a related organization in a capacity other than special
11.14 legal counsel, or (2) represented a director, officer, member of a committee of the board,
11.15 or employee, whose indemnification is in issue.

11.16 Sec. 14. Minnesota Statutes 2006, section 302A.553, subdivision 1, is amended to read:

11.17 Subdivision 1. **When permitted; status of shares.** (a) A corporation may acquire
11.18 its own shares, subject to section 302A.551 and subdivision 3.

11.19 (b) If a corporation acquires its own shares, then any of the acquired shares that are
11.20 not pledged by the corporation as security for the future payment of some or all of the
11.21 purchase price for the shares constitute authorized but unissued shares of the corporation,
11.22 unless the articles provide that they shall not be reissued. If the articles prohibit reissue,
11.23 the number of authorized shares is reduced by the number of shares acquired.

11.24 (c) If a corporation pledges acquired shares as security for future payment of all or
11.25 part of the purchase price for the shares and reissues the pledged shares in its own name;
11.26 then

11.27 (1) the shares must continue to be issued and outstanding except for voting and
11.28 determination of a quorum, and the shares are not considered to be present and entitled to
11.29 vote at any meeting of shareholders;

11.30 (2) the corporation may not vote or exercise any other rights of a shareholder with
11.31 respect to the pledged shares, but the pledgee shall have any rights, other than the right to
11.32 vote, with respect to the shares to which the pledgee is entitled to by contract;

11.33 (3) if the pledge is foreclosed, the corporation shall reissue and deliver the pledged
11.34 shares to or at the direction of the pledgee; and

11.35 (4) shares which are released from a pledge have the status specified in paragraph (b).

12.1 Sec. 15. Minnesota Statutes 2006, section 302A.701, is amended to read:

12.2 **302A.701 METHODS OF DISSOLUTION.**

12.3 A corporation may be dissolved:

12.4 (a) ~~by the incorporators~~ before the issuance of shares, pursuant to section 302A.711;

12.5 (b) ~~by the shareholders~~ after the issuance of shares, pursuant to sections 302A.721

12.6 to 302A.7291;

12.7 (c) by order of a court pursuant to sections 302A.741 to 302A.765; or

12.8 (d) by the secretary of state according to section 302A.821.

12.9 Sec. 16. Minnesota Statutes 2006, section 302A.721, is amended to read:

12.10 **302A.721 VOLUNTARY DISSOLUTION ~~BY SHAREHOLDERS~~ AFTER**
12.11 **THE ISSUANCE OF SHARES.**

12.12 Subdivision 1. **Manner.** After the issuance of shares, a corporation may be dissolved
12.13 ~~by the shareholders~~ when authorized in the manner set forth in this section.

12.14 Subd. 2. **Notice; approval.** (a) If the corporation has outstanding shares:

12.15 (1) Written notice shall be given to each shareholder, whether or not entitled to
12.16 vote at a meeting of shareholders, within the time and in the manner provided in section
12.17 302A.435 for notice of meetings of shareholders and, whether the meeting is a regular
12.18 or a special meeting, shall state that a purpose of the meeting is to consider dissolving
12.19 the corporation.

12.20 ~~(b)~~ (2) The proposed dissolution shall be submitted for approval at a meeting of
12.21 shareholders. If the proposed dissolution is approved at a meeting by the affirmative
12.22 vote of the holders of a majority of the voting power of all shares entitled to vote, the
12.23 dissolution shall be commenced.

12.24 (b) If the corporation no longer has any outstanding shares, then the directors may
12.25 authorize and commence the dissolution. If the directors take that action, then the notice
12.26 of dissolution filed under section 302A.723 shall so reflect and the directors shall have
12.27 the right to revoke the dissolution proceedings in accordance with section 302A.731,
12.28 subdivision 1.

12.29 **ARTICLE 2**

12.30 **TECHNICAL AMENDMENTS TO THE LIMITED LIABILITY COMPANY**
12.31 **ACT AND THE UNIFORM LIMITED PARTNERSHIP ACT OF 2001**

12.32 Section 1. Minnesota Statutes 2006, section 321.1206, is amended to read:

12.33 **321.1206 APPLICATION TO EXISTING RELATIONSHIPS.**

13.1 (a) Beginning January 1, 2005, no person may use chapter 322A to form an entity.

13.2 (b) Before January 1, 2007, this chapter governs only:

13.3 (1) a limited partnership formed on or after January 1, 2005; and

13.4 (2) except as otherwise provided in subsection (d):

13.5 (i) a limited partnership formed under chapter 322A which elects, in the manner
13.6 provided in its partnership agreement or by law for amending the partnership agreement,
13.7 to be subject to this chapter; and

13.8 (ii) a limited partnership formed under chapter 322, if the limited partnership elects
13.9 pursuant to subsection (f) to be subject to this chapter.

13.10 (c) Except as otherwise provided in subsection (d), on and after January 1, 2007,
13.11 this chapter governs:

13.12 (1) any limited partnership formed under chapter 322A which has not previously
13.13 elected to be governed by this chapter and is still in existence on January 1, 2007; and

13.14 (2) all limited partnerships, except for limited partnerships formed under chapter
13.15 322 that have not previously elected to become governed by this chapter or chapter 322A,
13.16 including each limited partnership formed under chapter 322A which has previously
13.17 elected to become governed by this chapter and each limited partnership formed under
13.18 chapter 322 which has elected, previously or otherwise, to be governed by this chapter.

13.19 (d) With respect to a limited partnership formed before January 1, 2005, the
13.20 following rules apply except as the partners otherwise elect in the manner provided in the
13.21 partnership agreement or by law for amending the partnership agreement:

13.22 (1) section 321.0104(c) does not apply and the limited partnership has whatever
13.23 duration it had under the law applicable immediately before the limited partnership
13.24 became subject to this chapter;

13.25 (2) the limited partnership is not required to amend its certificate of limited
13.26 partnership to comply with section 321.0201(a)(4);

13.27 (3) sections 321.0601 and 321.0602 do not apply and a limited partner has the same
13.28 right and power to dissociate from the limited partnership, with the same consequences, as
13.29 existed immediately before the limited partnership became subject to this chapter;

13.30 (4) section 321.0603(4) does not apply;

13.31 (5) section 321.0603(5) does not apply and a court has the same power to expel
13.32 a general partner as the court had immediately before the limited partnership became
13.33 subject to this chapter; and

13.34 (6) section 321.0801(3) does not apply and the connection between a person's
13.35 dissociation as a general partner and the dissolution of the limited partnership is the same
13.36 as existed immediately before the limited partnership became subject to this chapter.

14.1 (e) If subsection (c) causes a limited partnership that is a limited liability limited
14.2 partnership under section 322A.88 to become subject to this chapter:

14.3 (1) if immediately before the limited partnership that is a limited liability limited
14.4 partnership under section 322A.88 became subject to this chapter its name complied with
14.5 section 322A.02, the limited partnership may maintain its name even if the name does
14.6 not comply with section 321.0108(c); and

14.7 (2) the statement of qualification of the limited partnership that is a limited liability
14.8 limited partnership under section 322A.88, on file with the secretary of state pursuant to
14.9 section 322A.88(a)(2), is deemed to amend the limited partnership's certificate of limited
14.10 partnership to state that the limited partnership is a limited liability limited partnership.

14.11 (f) On or after January 1, 2005, a limited partnership formed under chapter 322 may
14.12 become subject to this chapter if:

14.13 (1) it elects, in the manner provided in its partnership agreement or by law for
14.14 amending the partnership agreement, to be subject to this chapter;

14.15 (2) neither its certificate of limited partnership nor its partnership agreement prohibit
14.16 the election;

14.17 (3) its certificate of limited partnership, on file with the county recorder, is amended
14.18 to state the election and, as may be necessary, to comply with this chapter; and

14.19 (4) a certified copy of the amended certificate of limited partnership, and of all
14.20 other limited partnership documents previously filed with the county recorder, is filed
14.21 with the secretary of state.

14.22 Sec. 2. Minnesota Statutes 2006, section 322B.03, subdivision 32, is amended to read:

14.23 Subd. 32. **Notice.** (a) "Notice" is given by a member of a limited liability company
14.24 to the limited liability company or a manager of a limited liability company when in
14.25 writing and mailed or delivered to the limited liability company or the manager at the
14.26 registered office or principal executive office of the limited liability company.

14.27 (b) In all other cases, "notice" is given to a person when:

14.28 (1) mailed to the person at an address designated by the person or at the last known
14.29 address of the person, ~~or when~~;

14.30 (2) deposited with a nationally recognized overnight delivery service for overnight
14.31 delivery or, if overnight delivery to the person is not available, for delivery as promptly
14.32 as practicable to the person at an address designated by the person or at the last known
14.33 address of the person;

14.34 (3) communicated to the person orally, ~~or when~~;

14.35 (4) handed to the person, ~~or when~~

15.1 (5) left at the office of the person with a clerk or other person in charge of the office,
15.2 or if there is no one in charge, when left in a conspicuous place in the office, or if the
15.3 office is closed or the person to be notified has no office, when left at the dwelling house
15.4 or usual place of abode of the person with some person of suitable age and discretion
15.5 ~~who is then residing there~~ therein.

15.6 (c) Notice by mail is given when deposited in the United States mail with sufficient
15.7 postage affixed. ~~Notice is considered by deposit for delivery is given when deposited~~
15.8 for delivery as provided in paragraph (b), clause (2), after having made sufficient
15.9 arrangements for payment by the sender.

15.10 (d) Notice is deemed received when it is given.

15.11 Sec. 3. Minnesota Statutes 2006, section 322B.11, is amended to read:

15.12 **322B.11 MEMBER REQUIREMENT.**

15.13 Subject to the provisions of sections 322B.60 and 322B.80, subdivision 1, a limited
15.14 liability company shall have one or more members.

15.15 Sec. 4. Minnesota Statutes 2006, section 322B.35, subdivision 3, is amended to read:

15.16 Subd. 3. **Notice and liability.** When written action is permitted to be taken by less
15.17 than all members, all members must be notified ~~immediately~~ of its text and effective
15.18 date no later than five days after the effective time of the action. Failure to provide the
15.19 notice does not invalidate the written action. A member who does not sign or consent to
15.20 the written action has no liability for the action or actions taken by the written action.

15.21 Sec. 5. Minnesota Statutes 2006, section 322B.363, subdivision 3, is amended to read:

15.22 Subd. 3. **Termination.** An appointment may be terminated at will, unless the
15.23 appointment is coupled with an interest, in which case it shall not be terminated
15.24 except in accordance with the terms of an agreement, if any, between the parties to the
15.25 appointment. Termination may be made by filing written notice of the termination of the
15.26 appointment with a manager of the limited liability company, ~~or~~ by filing a new written
15.27 appointment of a proxy, signed by the member, with a manager of the limited liability
15.28 company. ~~Termination in either,~~ or by telephonic transmission or authenticated electronic
15.29 communication, whether or not accompanied by written instructions of the member, of
15.30 a new appointment of a proxy with the limited liability company or the limited liability
15.31 company's duly authorized agent. Termination in any such manner revokes all prior proxy
15.32 appointments and is effective when filed with a manager of the limited liability company
15.33 or when the telephonic transmission or authenticated electronic communication is received

16.1 by the limited liability company or the limited liability company's duly authorized agent.
16.2 The telephonic transmission or authenticated electronic communication must set forth or
16.3 be submitted with information from which it can be determined that the new appointment
16.4 was authorized by the member.

16.5 Sec. 6. Minnesota Statutes 2006, section 322B.643, subdivision 2, is amended to read:

16.6 Subd. 2. **Meetings solely by means of remote communication.** Any
16.7 meeting among governors may be conducted solely by one or more means of remote
16.8 communication through which all of the governors may participate with each other
16.9 during the meeting, if the same notice is given of the meeting as would be required by
16.10 subdivision 4, and if the number of governors participating in the meeting would be
16.11 sufficient to constitute a quorum. Participation in a meeting by that means constitutes
16.12 presence in person at the meeting.

16.13 Sec. 7. Minnesota Statutes 2006, section 322B.643, subdivision 3, is amended to read:

16.14 Subd. 3. **Participation in meetings by means of remote communication.** A
16.15 governor may participate in a board of governors meeting by means of conference
16.16 telephone or, if authorized by the board, by such other means of remote communication, in
16.17 each case through which the governor, other governors so participating, and all governors
16.18 physically present at the meeting may participate with each other during the meeting.
16.19 Participation in a meeting by that means constitutes presence in person at the meeting.

16.20 Sec. 8. Minnesota Statutes 2006, section 322B.66, subdivision 1, is amended to read:

16.21 Subdivision 1. **Generally.** A resolution approved by the affirmative vote of a
16.22 majority of the ~~board of~~ governors then holding office may establish committees having
16.23 the authority of the board in the management of the business of the limited liability
16.24 company only to the extent provided in the resolution. Committees may include a special
16.25 litigation committee consisting of one or more independent governors or other independent
16.26 persons to consider legal rights or remedies of the limited liability company and whether
16.27 those rights and remedies should be pursued. Committees other than special litigation
16.28 committees are subject at all times to the direction and control of the board of governors.

16.29 Sec. 9. Minnesota Statutes 2006, section 322B.666, subdivision 1, is amended to read:

16.30 Subdivision 1. **Conflict and procedure when conflict arises.** A contract or other
16.31 transaction between a limited liability company and one or more of its governors, or
16.32 between a limited liability company and an organization in or of which one or more of its

17.1 governors are governors, directors, managers, officers, or legal representatives or have a
17.2 material financial interest, is not void or voidable because the governor or governors or
17.3 the other organizations are parties or because the governor or governors are present at the
17.4 meeting of the members or the board of governors or a committee at which the contract or
17.5 transaction is authorized, approved, or ratified, if:

17.6 (1) the contract or transaction was, and the person asserting the validity of the
17.7 contract or transaction sustains the burden of establishing that the contract or transaction
17.8 was, fair and reasonable as to the limited liability company at the time it was authorized,
17.9 approved, or ratified;

17.10 (2) the material facts as to the contract or transaction and as to the governor's or
17.11 governors' interest are fully disclosed or known to the members, whether or not entitled
17.12 to vote, and the contract or transaction is approved in good faith by (i) the owners of
17.13 two-thirds of the voting power of the membership interests entitled to vote that are
17.14 owned by persons other than the interested governor or governors, or (ii) the unanimous
17.15 affirmative vote of all members, whether or not entitled to vote;

17.16 (3) the material facts as to the contract or transaction and as to the governor's or
17.17 governors' interest are fully disclosed or known to the ~~board of governors~~ or a committee,
17.18 and the ~~board of governors~~ or committee authorizes, approves, or ratifies the contract or
17.19 transaction in good faith by a majority of the ~~board of governors~~ or committee members
17.20 currently holding office, but the interested governor or governors ~~are~~ shall not be counted
17.21 in determining the presence of a quorum and ~~must~~ shall not vote; or

17.22 (4) the contract or transaction is a distribution described in section 322B.54,
17.23 subdivision 1, or a merger or exchange described in section 322B.70, subdivision 1 or 2.

17.24 Sec. 10. Minnesota Statutes 2006, section 322B.699, subdivision 1, is amended to read:

17.25 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this
17.26 subdivision have the meanings given them.

17.27 (b) "Limited liability company" includes a domestic or foreign limited liability
17.28 company that was the predecessor of the limited liability company referred to in this
17.29 section in a merger or other transaction in which the predecessor's existence ceased upon
17.30 consummation of the transaction.

17.31 (c) "Official capacity" means (1) with respect to a governor, the position of governor
17.32 in a limited liability company, (2) with respect to a person other than a governor, the
17.33 elective or appointive office or position held by a manager, member of a committee of
17.34 the board of governors, the employment relationship undertaken by an employee of the
17.35 limited liability company, or the scope of the services provided by members of the limited

liability company who provide services to the limited liability company, and (3) with respect to a governor, manager, member, or employee of the limited liability company who, while a member, governor, manager, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

(d) "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.

(e) "Special legal counsel" means counsel who has not in the preceding five years (1) represented the limited liability company or a related organization, ~~or in a capacity other than special legal counsel~~, or (2) represented a governor, manager, member of a committee of the board of governors, or employee, whose indemnification is in issue.

Sec. 11. Minnesota Statutes 2006, section 322B.80, subdivision 1, is amended to read:

Subdivision 1. **Dissolution events.** A limited liability company dissolves upon the occurrence of any of the following events:

(1) when the period, if any, fixed in the articles of organization for the duration of the limited liability company expires, or if the limited liability company's term expires pursuant to section 322B.20, subdivision 2, paragraph (a);

(2) by order of a court pursuant to sections 322B.833 and 322B.843;

(3) ~~by action of the organizers~~ prior to accepting contributions pursuant to section 322B.803;

(4) ~~by action of the members~~ after accepting contributions pursuant to section 322B.806;

(5)(i) for limited liability companies whose existence begins before August 1, 1999, except as otherwise provided in the articles or a member control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if (A) there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of all the remaining members obtained no later than 90 days after the termination of the continued membership, or (B) if

19.1 the membership of the last or sole member terminates and the legal representative of that
19.2 last or sole member causes the limited liability company to admit at least one member;

19.3 (ii) for limited liability companies whose existence begins on or after August 1,
19.4 1999, upon the occurrence of an event that terminates the continued membership of a
19.5 member in the limited liability company, but only if: (A) the articles of organization or a
19.6 member control agreement specifically provide that the termination causes dissolution
19.7 and in that event only as provided in the articles or member control agreement; or (B) if
19.8 the membership of the last or sole member terminates and the legal representative of that
19.9 last or sole member does not cause the limited liability company to admit at least one
19.10 member within 180 days after the termination;

19.11 (6) a merger in which the limited liability company is not the surviving organization;
19.12 or

19.13 (7) when terminated by the secretary of state according to section 322B.960.

19.14 Sec. 12. Minnesota Statutes 2006, section 322B.806, is amended to read:

19.15 **322B.806 NONJUDICIAL DISSOLUTION ~~BY MEMBERS~~ AFTER**
19.16 **ACCEPTING CONTRIBUTIONS.**

19.17 Subdivision 1. **Manner.** A limited liability company may be dissolved ~~by the~~
19.18 ~~members~~ after accepting contributions when authorized in the manner set forth in this
19.19 section.

19.20 Subd. 2. **Notice and approval.** (a) If the limited liability company has members:

19.21 (1) written notice shall be given to each member, whether or not entitled to vote at a
19.22 meeting of members, within the time and in the manner provided in section 322B.34 for
19.23 notice of meetings of members and, whether the meeting is a regular or a special meeting,
19.24 must state that a purpose of the meeting is to consider dissolving the limited liability
19.25 company and that dissolution must be followed by the winding up and termination of the
19.26 limited liability company-; and

19.27 ~~(b)~~ (2) the proposed dissolution must be submitted for approval at a meeting of
19.28 members. If the proposed dissolution is approved at a meeting by the affirmative vote of
19.29 the owners of a majority of the voting power of all membership interests entitled to vote,
19.30 the limited liability company is dissolved.

19.31 (b) If the limited liability company no longer has any members, the governors may
19.32 authorize and commence the dissolution. If the governors take that action, the notice of
19.33 dissolution filed under section 322B.81 shall so reflect this fact and the governors shall
19.34 have the right to revoke the dissolution proceedings in accordance with section 322B.823,
19.35 subdivision 1.

ARTICLE 3

NONPROFIT LIMITED LIABILITY COMPANIES

Section 1. Minnesota Statutes 2006, section 322B.03, subdivision 20, is amended to read:

Subd. 20. **Foreign limited liability company.** "Foreign limited liability company" means a limited liability company ~~organized for profit~~ that is organized under or governed by laws other than the laws of this state for a purpose or purposes for which a limited liability company may be organized under this chapter.

Sec. 2. Minnesota Statutes 2006, section 322B.03, is amended by adding a subdivision to read:

Subd. 31a. **Nonprofit limited liability company.** "Nonprofit limited liability company" means a limited liability company that is a nonprofit limited liability company under section 322B.975.

Sec. 3. Minnesota Statutes 2006, section 322B.10, is amended to read:

322B.10 PURPOSES.

A limited liability company may be organized under this chapter for any ~~business~~ lawful purpose or purposes, unless some other statute of this state requires organization for any of those purposes under a different law. Unless otherwise provided in its articles of organization, a limited liability company has general business purposes.

Sec. 4. Minnesota Statutes 2006, section 322B.78, is amended to read:

322B.78 CONVERSION.

A domestic limited liability company that is not a nonprofit limited liability company may convert to a domestic corporation pursuant to sections 302A.681 to 302A.691.

Sec. 5. Minnesota Statutes 2006, section 322B.90, subdivision 2, is amended to read:

Subd. 2. **Limitations.** ~~A foreign limited liability company holding a valid certificate of authority in this state has no greater rights and privileges than a domestic limited liability company.~~ A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

21.1 Sec. 6. **[322B.975] NONPROFIT LIMITED LIABILITY COMPANIES.**

21.2 Subdivision 1. Status as nonprofit limited liability company. A limited liability
21.3 company is a nonprofit limited liability company if it is organized under or governed by
21.4 this chapter and its articles of organization state that it is a nonprofit limited liability
21.5 company governed by this section.

21.6 Subd. 2. Limitations on pecuniary gain and distributions to members. A
21.7 nonprofit limited liability company may not:

21.8 (1) be formed for a purpose involving pecuniary gain to its members, other than to
21.9 members that are nonprofit organizations or subdivisions, units, or agencies of the United
21.10 States or a state or local government; or

21.11 (2) pay dividends, make distributions, or pay other pecuniary remuneration, directly
21.12 or indirectly, to its members, other than to members that are nonprofit organizations or
21.13 subdivisions, units, or agencies of the United States or a state or local government.

21.14 Subd. 3. Limitations on persons who may be members. A natural person may not
21.15 be a member of, or own any financial rights or governance rights in, a nonprofit limited
21.16 liability company.

21.17 Subd. 4. Purposes; conduct. (a) Subject to subdivision 2:

21.18 (1) a nonprofit limited liability company may be organized under this chapter for
21.19 any lawful purpose, unless another statute requires incorporation or organization for a
21.20 purpose under a different law; and

21.21 (2) a nonprofit limited liability company has a general purpose of engaging in any
21.22 lawful activity unless otherwise limited in its articles of organization.

21.23 (b) A nonprofit limited liability company engaging in conduct that is regulated by
21.24 another statute is subject to the limitations of the other statute.

21.25 Subd. 5. Provisions of chapter 317A applicable to nonprofit limited liability
21.26 companies. (a) Section 317A.161, subdivision 11, applies to a nonprofit limited liability
21.27 company as if it were a nonprofit corporation governed by chapter 317A. Section
21.28 317A.251 applies to a governor as if the governor were a director of a nonprofit
21.29 corporation, and section 322B.663 does not apply.

21.30 (b) Section 317A.255 applies to, and with regard to, a governor as if the governor
21.31 were a director of a nonprofit corporation, and section 322B.666 does not apply.

21.32 (c) Section 317A.257 applies to a person who serves without compensation as a
21.33 governor, manager, member, or agent of a nonprofit limited liability company as if such
21.34 person were serving without compensation as a director, officer, member, or agent of
21.35 a nonprofit corporation.

22.1 (d) Section 317A.671 regarding the diversion of certain assets applies to a nonprofit
22.2 limited liability company as if it were a nonprofit corporation governed by chapter 317A.

22.3 (e) Section 317A.735 regarding the distribution of assets on dissolution applies to
22.4 a nonprofit limited liability company as if it were a nonprofit corporation governed by
22.5 chapter 317A.

22.6 (f) Section 317A.751 regarding judicial intervention applies to a nonprofit limited
22.7 liability company as if it were a nonprofit corporation governed by chapter 317A.

22.8 Subd. 6. **Notice to and authority of attorney general.** The attorney general has
22.9 the same authority and powers with regard to a nonprofit limited liability company as the
22.10 attorney general has with regard to a corporation governed by chapter 317A, including but
22.11 not limited to sections 317A.811 and 317A.813.

APPENDIX
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