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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 977

- 02/28/2013 Authored by Hortman, Hoppe and Freiberg
- The bill was read for the first time and referred to the Committee on Commerce and Consumer Protection Finance and Policy
- 03/06/2014 Adoption of Report: Amended and Placed on the General Register
- Read Second Time
- 03/13/2014 Calendar for the Day
- Read Third Time
- Passed by the House and transmitted to the Senate

1.1 A bill for an act

1.2 relating to business organizations; regulating the organization and operation of

1.3 limited liability companies; enacting a revised uniform limited liability company

1.4 act; providing conforming changes; amending Minnesota Statutes 2012, sections

1.5 48A.03, subdivision 4; 181.970, subdivision 2; 270C.721; 273.124, subdivision

1.6 8; 290.01, subdivision 3b; 302A.011, by adding subdivisions; 302A.115,

1.7 subdivision 1; 302A.681; 302A.683; 302A.685; 302A.689; 302A.691; 308A.121,

1.8 subdivision 1; 308B.801, subdivisions 1, 2, 5; 308B.805, subdivision 1;

1.9 308B.835, subdivision 2; 317A.115, subdivision 2; 319B.02, subdivisions 3, 22;

1.10 319B.10, subdivision 3; 321.0108; proposing coding for new law in Minnesota

1.11 Statutes, chapter 302A; proposing coding for new law as Minnesota Statutes,

1.12 chapter 322C; repealing Minnesota Statutes 2012, sections 302A.687; 322B.01;

1.13 322B.02; 322B.03, subdivisions 1, 2, 3, 6, 6a, 7, 8, 10, 11, 12, 13, 14, 15, 17,

1.14 17a, 17b, 18, 19, 19a, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 31a, 32, 33,

1.15 34, 35, 36, 36a, 37, 38, 39, 40, 41, 41a, 42, 43, 44, 45, 45a, 46, 47, 48, 49, 50, 51;

1.16 322B.04; 322B.10; 322B.105; 322B.11; 322B.115; 322B.12, subdivisions 1, 2,

1.17 3, 4, 5; 322B.125; 322B.13; 322B.135; 322B.14; 322B.145; 322B.15; 322B.155;

1.18 322B.16; 322B.165; 322B.17; 322B.175; 322B.18; 322B.20; 322B.21; 322B.22;

1.19 322B.23; 322B.30; 322B.303; 322B.306; 322B.31; 322B.313; 322B.316;

1.20 322B.32; 322B.323; 322B.326; 322B.33; 322B.333; 322B.336; 322B.34;

1.21 322B.343; 322B.346; 322B.348; 322B.35; 322B.353; 322B.356; 322B.36;

1.22 322B.363, subdivisions 1, 2, 3, 4, 5, 6, 7; 322B.366, subdivision 1; 322B.37;

1.23 322B.373; 322B.376; 322B.38; 322B.383; 322B.386; 322B.40; 322B.41;

1.24 322B.42; 322B.43; 322B.50; 322B.51; 322B.52; 322B.53; 322B.54; 322B.55;

1.25 322B.56; 322B.60; 322B.603; 322B.606; 322B.61; 322B.613; 322B.616;

1.26 322B.62; 322B.623; 322B.626; 322B.63; 322B.633; 322B.636; 322B.64;

1.27 322B.643; 322B.646; 322B.65; 322B.653; 322B.656; 322B.66; 322B.663;

1.28 322B.666; 322B.67; 322B.673; 322B.676; 322B.679; 322B.68; 322B.683;

1.29 322B.686; 322B.689; 322B.69; 322B.693; 322B.696; 322B.699; 322B.70;

1.30 322B.71; 322B.72; 322B.73; 322B.74; 322B.75; 322B.755; 322B.76; 322B.77;

1.31 322B.78; 322B.80; 322B.803; 322B.806; 322B.81; 322B.813; 322B.816,

1.32 subdivisions 1, 2, 4, 5, 6; 322B.82; 322B.823; 322B.826; 322B.83; 322B.833;

1.33 322B.836; 322B.84; 322B.843; 322B.846; 322B.85; 322B.853; 322B.856;

1.34 322B.86; 322B.863; 322B.866; 322B.87; 322B.873, subdivisions 1, 4; 322B.876,

1.35 subdivision 1; 322B.88; 322B.883; 322B.90; 322B.905; 322B.91, subdivisions

1.36 1, 2; 322B.915; 322B.92; 322B.925; 322B.93; 322B.935; 322B.94; 322B.945;

1.37 322B.95; 322B.955; 322B.960, subdivisions 1, 4, 5; 322B.975.

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

## ARTICLE 1

## REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

## GENERAL PROVISIONS

Section 1. [322C.0101] CITATION.

This chapter may be cited as the "Minnesota Revised Uniform Limited Liability Company Act."

Sec. 2. [322C.0102] DEFINITIONS.

Subdivision 1. **Application.** For purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Articles of organization.** "Articles of organization" means the articles of organization required by section 322C.0201. The term includes the articles of organization as amended or restated.

Subd. 3. **Board.** "Board" mean the board of governors, however designated, of a board-managed limited liability company.

Subd. 4. **Board-managed limited liability company.** "Board-managed limited liability company" means a limited liability company that qualifies as such under section 322C.0407, subdivision 1.

Subd. 5. **Contribution.** "Contribution" means any benefit provided by a person to a limited liability company:

(1) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(2) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(3) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

Subd. 6. **Debtor in bankruptcy.** "Debtor in bankruptcy" means a person that is the subject of:

(1) an order for relief under United States Code, title 12, or a successor statute of general application; or

(2) a comparable order under federal, state, or foreign law governing insolvency.

Subd. 7. **Distribution.** "Distribution," except as otherwise provided in section 322C.0405, subdivision 7, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

3.1 Subd. 8. **Effective.** "Effective," with respect to a record required or permitted  
3.2 to be filed with the secretary of state under this chapter, means effective under section  
3.3 322C.0205, subdivision 3.

3.4 Subd. 9. **Filed.** "Filed" or "filed with the secretary of state" means that a document  
3.5 meeting the applicable requirements of this chapter, signed and accompanied by any  
3.6 required filing fees, has been delivered to the secretary of state. The secretary of state shall  
3.7 endorse on the original or an image thereof the word "Filed" and the month, day, and year  
3.8 of filing, record the document or an image thereof in the Office of the Secretary of State,  
3.9 and return a document or the image thereof to the person who delivered it for filing.

3.10 Subd. 10. **Foreign limited liability company.** "Foreign limited liability company"  
3.11 means an unincorporated entity formed under the law of a jurisdiction other than this state  
3.12 and denominated by that law as a limited liability company.

3.13 Subd. 11. **Governor.** "Governor" means a member of the board, however  
3.14 designated, of a board-managed limited liability company.

3.15 Subd. 12. **Limited liability company.** "Limited liability company," except in the  
3.16 phrase "foreign limited liability company," means an entity formed under this chapter.

3.17 Subd. 13. **Manager.** "Manager" means a person that under the operating agreement  
3.18 of a manager-managed limited liability company is responsible, alone or in concert with  
3.19 others, for performing the management functions stated in section 322C.0407, subdivision  
3.20 3.

3.21 Subd. 14. **Manager-managed limited liability company.** "Manager-managed  
3.22 limited liability company" means a limited liability company that qualifies as such under  
3.23 section 322C.0407, subdivision 1.

3.24 Subd. 15. **Member.** "Member" means a person that has become a member of a  
3.25 limited liability company under section 322C.0401 and has not dissociated under section  
3.26 322C.0602.

3.27 Subd. 16. **Member-managed limited liability company.** "Member-managed  
3.28 limited liability company" means a limited liability company that is not a manager-managed  
3.29 limited liability company or a board-managed limited liability company.

3.30 Subd. 17. **Operating agreement.** "Operating agreement" means the agreement,  
3.31 whether or not referred to as an operating agreement and whether oral, in a record, implied,  
3.32 or in any combination thereof, of all the members of a limited liability company, including  
3.33 a sole member, concerning the matters described in section 322C.0110, subdivision 1. The  
3.34 term includes the agreement as amended or restated.

3.35 Subd. 18. **Oppressive.** (a) "Oppressive," with respect to an application brought by a  
3.36 member under section 322C.0701, subdivision 1, clause (5), item (ii), means conduct:

- 4.1 (1) engaged in by one or more:
- 4.2 (i) members in a member-managed limited liability company or who are otherwise
- 4.3 in control of any limited liability company;
- 4.4 (ii) managers in a manager-managed limited liability company; or
- 4.5 (iii) governors of a board-managed limited liability company;
- 4.6 (2) that occurs with respect to the applicant member's capacity as:
- 4.7 (i) a member, manager, or governor of a limited liability company; or
- 4.8 (ii) an employee of a limited liability company with 35 or fewer members; and
- 4.9 (3) that is unfairly prejudicial to the applicant member in a capacity listed in clause
- 4.10 (2), because the conduct frustrated an expectation of the applicant member that:
- 4.11 (i) is reasonable in light of the reasonable expectations of the other members;
- 4.12 (ii) was material to the applicant's decision to become a member of the limited
- 4.13 liability company or for a substantial time has been material during the member's
- 4.14 continuing membership;
- 4.15 (iii) was known to other members or that the other members had reason to know; and
- 4.16 (iv) is not contrary to the operating agreement as applied consistently with the
- 4.17 contractual obligation of good faith and fair dealing under section 322C.0409, subdivision
- 4.18 4.
- 4.19 (b) For the purposes of paragraph (a), conduct:
- 4.20 (1) includes words, action, inaction, and any combination of words, action, or
- 4.21 inaction; and
- 4.22 (2) is not oppressive solely by reason of a good faith disagreement as to the content,
- 4.23 interpretation, or application of the company's operating agreement.
- 4.24 Subd. 19. **Organizer.** "Organizer" means a person that acts under section
- 4.25 322C.0201 to form a limited liability company.
- 4.26 Subd. 20. **Person.** "Person" means an individual, corporation, business trust, estate,
- 4.27 trust, partnership, limited liability company, association, joint venture, public corporation,
- 4.28 government or governmental subdivision, agency, or instrumentality, or any other legal or
- 4.29 commercial entity.
- 4.30 Subd. 21. **Principal office.** "Principal office" means the principal executive office
- 4.31 of a limited liability company or foreign limited liability company, whether or not the
- 4.32 office is located in this state.
- 4.33 Subd. 22. **Record.** "Record" means information that is inscribed on a tangible
- 4.34 medium or that is stored in an electronic or other medium and is retrievable in perceivable
- 4.35 form.

5.1 Subd. 23. **Recorded in the real property records.** "Recorded in the real property  
 5.2 records" means that a certified copy of a statement meeting the applicable requirements  
 5.3 of this chapter, including containing a legal description of the property affected by the  
 5.4 statement, as filed with the secretary of state, has been recorded in the office of the county  
 5.5 reorder in the county in which the real property affected by the statement is located or, if  
 5.6 the real property is registered under chapter 508 or 508A, has been recorded in the office of  
 5.7 the applicable registrar of titles and memorialized on the certificate of title for that property.

5.8 Subd. 24. **Registered office.** "Registered office" means:

5.9 (1) the office that a limited liability company is required to designate and maintain  
 5.10 under section 322C.0113; or

5.11 (2) the principal office of a foreign limited liability company.

5.12 Subd. 25. **Sign.** "Sign" means, with the present intent to authenticate or adopt  
 5.13 a record:

5.14 (1) to execute or adopt a tangible symbol; or

5.15 (2) to attach to or logically associate with the record an electronic symbol, sound,  
 5.16 or process.

5.17 Subd. 26. **State.** "State" means a state of the United States, the District of Columbia,  
 5.18 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject  
 5.19 to the jurisdiction of the United States.

5.20 Subd. 27. **Transfer.** "Transfer" includes an assignment, conveyance, deed, bill of  
 5.21 sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

5.22 Subd. 28. **Transferable interest.** "Transferable interest" means the right, as  
 5.23 originally associated with a person's capacity as a member, to receive distributions from a  
 5.24 limited liability company in accordance with the operating agreement, whether or not the  
 5.25 person remains a member or continues to own any part of the right.

5.26 Subd. 29. **Transferee.** "Transferee" means a person to which all or part of a  
 5.27 transferable interest has been transferred, whether or not the transferor is a member.

5.28 **Sec. 3. [322C.0103] KNOWLEDGE; NOTICE.**

5.29 Subdivision 1. **Knowledge of facts.** A person knows a fact when the person:

5.30 (1) has actual knowledge of it; or

5.31 (2) is deemed to know it under subdivision 4, clause (1), or law other than this chapter.

5.32 Subd. 2. **Notice of facts.** A person has notice of a fact when the person:

5.33 (1) has reason to know the fact from all of the facts known to the person at the  
 5.34 time in question; or

5.35 (2) is deemed to have notice of the fact under subdivision 4, clause (2).

6.1 Subd. 3. **Notification of facts.** A person notifies another of a fact by taking steps  
6.2 reasonably required to inform the other person in ordinary course, whether or not the  
6.3 other person knows the fact.

6.4 Subd. 4. **Constructive notice.** A person that is not a member is deemed:

6.5 (1) to know of a limitation on authority to transfer real property as provided in  
6.6 section 322C.0302, subdivision 7; and

6.7 (2) to have notice of a limited liability company's:

6.8 (i) dissolution, 90 days after a statement of dissolution under section 322C.0702,  
6.9 subdivision 2, clause (2)(i), becomes effective;

6.10 (ii) termination, 90 days after a statement of termination under section 322C.0702,  
6.11 subdivision 2, clause (2)(vi), becomes effective; and

6.12 (iii) merger, conversion, or domestication, 90 days after articles of merger,  
6.13 conversion, or domestication under sections 322C.1001 to 322C.1015 become effective.

6.14 Sec. 4. **[322C.0104] NATURE, PURPOSE, AND DURATION OF LIMITED**  
6.15 **LIABILITY COMPANY.**

6.16 Subdivision 1. **Separate entity.** A limited liability company is an entity distinct  
6.17 from its members.

6.18 Subd. 2. **Permitted purposes.** Except for a nonprofit limited liability company  
6.19 subject to section 322C.1101, which must comply with that section, a limited liability  
6.20 company may have any lawful purpose.

6.21 Subd. 3. **Duration.** A limited liability company has perpetual duration.

6.22 Sec. 5. **[322C.0105] POWERS.**

6.23 Subdivision 1. **Powers generally.** Except as provided in subdivision 2, a limited  
6.24 liability company has the capacity to sue and be sued in its own name and the power to do  
6.25 all things necessary or convenient to carry on its activities.

6.26 Subd. 2. **Shelf LLC.** Until a limited liability company has or has had at least one  
6.27 member, the company lacks the capacity to do any act or carry on any activity except:

6.28 (1) delivering to the secretary of state for filing a statement of change under section  
6.29 322C.0114, an amendment to the certificate under section 322C.0202, a statement of  
6.30 correction under section 322C.0206, an annual report under section 322C.0208, and a  
6.31 statement of termination under section 322C.0702;

6.32 (2) admitting a member under section 322C.0401; and

6.33 (3) dissolving under section 322C.0701.

7.1 Subd. 3. **Ratification.** A limited liability company that has or has had at least one  
7.2 member may ratify an act or activity that occurred when the company lacked capacity  
7.3 under subdivision 2.

7.4 **Sec. 6. [322C.0106] GOVERNING LAW.**

7.5 The law of this state governs:

7.6 (1) the internal affairs of a limited liability company; and

7.7 (2) the liability of a member as member, a manager as manager, and a governor as  
7.8 governor, for the debts, obligations, or other liabilities of a limited liability company.

7.9 **Sec. 7. [322C.0107] SUPPLEMENTAL PRINCIPLES OF LAW.**

7.10 Unless displaced by particular provisions of this chapter, the principles of law and  
7.11 equity supplement this chapter.

7.12 **Sec. 8. [322C.0108] LIMITED LIABILITY COMPANY NAME.**

7.13 Subdivision 1. **Requirements and prohibitions.** The limited liability company  
7.14 name must:

7.15 (1) be in the English language or in any other language expressed in English letters  
7.16 or characters;

7.17 (2) contain the words "limited liability company," or must contain the abbreviation  
7.18 "LLC" or, in the case of a limited liability company that is a professional firm subject to  
7.19 chapter 319B, must meet the requirements of section 319B.05 applicable to a limited  
7.20 liability company;

7.21 (3) not contain the word "corporation" or "incorporated" and must not contain the  
7.22 abbreviation of either or both of these words;

7.23 (4) not contain a word or phrase that indicates or implies that it is organized for a  
7.24 purpose other than a permitted purpose; and

7.25 (5) be distinguishable upon the records in the Office of the Secretary of State  
7.26 from the name of each domestic limited liability company, limited liability partnership,  
7.27 corporation, and limited partnership, whether profit or nonprofit, and each foreign limited  
7.28 liability company, limited liability partnership, corporation, and limited partnership on  
7.29 file, authorized or registered to do business in this state at the time of filing, whether profit  
7.30 or nonprofit, and each name the right to which is, at the time of organization, reserved as  
7.31 provided for in sections 5.35, 302A.117, 317A.117, 321.0109, 322B.125, or 333.001 to  
7.32 333.54, unless there is filed with the articles of organization one of the following:

8.1 (i) the written consent of the domestic limited liability company, limited liability  
8.2 partnership, corporation, or limited partnership or the foreign limited liability company,  
8.3 limited liability partnership, corporation, or limited partnership authorized or registered to  
8.4 do business in this state or the holder of a reserved name or a name filed by or registered  
8.5 with the secretary of state under sections 333.001 to 333.54 having a name that is not  
8.6 distinguishable;

8.7 (ii) a certified copy of a final decree of a court in this state establishing the prior right  
8.8 of the applicant to the use of the name in this state; or

8.9 (iii) the applicant's affidavit that the domestic or foreign limited liability company,  
8.10 domestic or foreign corporation, or domestic or foreign limited partnership with the  
8.11 name that is not distinguishable has been organized, incorporated, or on file in this  
8.12 state for at least three years prior to the affidavit, if it is a domestic limited liability  
8.13 company, corporation, or limited partnership, or has been authorized or registered to  
8.14 do business in this state for at least three years prior to the affidavit, if it is a foreign  
8.15 limited liability company, corporation, or limited partnership, or that the holder of a name  
8.16 filed or registered with the secretary of state under sections 333.001 to 333.54 filed  
8.17 or registered that name at least three years prior to the affidavit, that the domestic or  
8.18 foreign limited liability company, domestic or foreign corporation, or domestic or foreign  
8.19 limited partnership or holder has not during the three-year period before the affidavit filed  
8.20 any document with the secretary of state; that the applicant has mailed written notice  
8.21 to the domestic or foreign limited liability company, domestic or foreign corporation,  
8.22 or domestic or foreign limited partnership or the holder of a name filed or registered  
8.23 with the secretary of state under sections 333.001 to 333.54 by certified mail, return  
8.24 receipt requested, properly addressed to the registered office of the domestic or foreign  
8.25 limited liability company or domestic or foreign corporation or in care of the agent of the  
8.26 domestic or foreign limited partnership, or the address of the holder of a name filed or  
8.27 registered with the secretary of state under sections 333.001 to 333.54, shown in the  
8.28 records of the secretary of state, stating that the applicant intends to use a name that is  
8.29 not distinguishable and the notice has been returned to the applicant as undeliverable to  
8.30 the addressee of the domestic or foreign limited liability company, domestic or foreign  
8.31 corporation, or domestic or foreign limited partnership or holder of a name filed or  
8.32 registered with the secretary of state under sections 333.001 to 333.54; that the applicant,  
8.33 after diligent inquiry, has been unable to find any telephone listing for the domestic or  
8.34 foreign limited liability company, domestic or foreign corporation, or domestic or foreign  
8.35 limited partnership with the name that is not distinguishable in the county in which is  
8.36 located the registered office of the domestic or foreign limited liability company, domestic



9.1 or foreign corporation, or domestic or foreign limited partnership shown in the records of  
9.2 the secretary of state or has been unable to find any telephone listing for the holder of a  
9.3 name filed or registered with the secretary of state under sections 333.001 to 333.54  
9.4 in the county in which is located the address of the holder shown in the records of the  
9.5 secretary of state; and that the applicant has no knowledge that the domestic or foreign  
9.6 limited liability company, domestic or foreign corporation, or domestic or foreign limited  
9.7 partnership or holder of a name filed or registered with the secretary of state under sections  
9.8 333.001 to 333.54 is currently engaged in business in this state.

9.9 Subd. 2. **Determination.** The secretary of state shall determine whether a name is  
9.10 "distinguishable" from another name for purposes of this section and section 322B.125.

9.11 Subd. 3. **Other laws affecting use of names.** This section and section 322B.125  
9.12 do not abrogate or limit the law of unfair competition or unfair practices, or sections  
9.13 333.001 to 333.54, or the laws of the United States with respect to the right to acquire  
9.14 and protect copyrights, trade names, trademarks, service names, service marks, or any  
9.15 other rights to the exclusive use of names or symbols, or derogate the common law or  
9.16 the principles of equity.

9.17 Subd. 4. **Use of name by surviving or successor organization.** A limited  
9.18 liability company that is the surviving organization in a merger with one or more other  
9.19 organizations, or that is the continuation of an organization following a conversion, or that  
9.20 is organized by the reorganization of one or more organizations, or that acquires by sale,  
9.21 lease, or other disposition to or exchange with an organization all or substantially all of the  
9.22 assets of another organization, including its name, may have the same name as that used in  
9.23 this state by any of the other organizations, if the other organization whose name is sought to  
9.24 be used was organized under the laws of, or is authorized to transact business in, this state.

9.25 Subd. 5. **Injunction.** The use of a name by a limited liability company in violation  
9.26 of this section does not affect or vitiate its limited liability company existence, but a court  
9.27 in this state may, upon application of the state or of a person interested or affected, enjoin  
9.28 the limited liability company from doing business under a name assumed in violation of  
9.29 this section, although its articles of organization may have been filed with the secretary of  
9.30 state and articles of organization issued.

9.31 Sec. 9. **[322C.0109] RESERVED NAME.**

9.32 Subdivision 1. **Procedure.** A person may reserve the exclusive use of the name of  
9.33 a limited liability company, including an alternate name for a foreign limited liability  
9.34 company, by filing an application with the secretary of state. The application must state  
9.35 the name and address of the applicant and the name proposed to be reserved. If the

10.1 secretary of state finds that the name applied for is available, it must be reserved for the  
10.2 applicant's exclusive use for a one-year period.

10.3 Subd. 2. **Transfer.** The owner of a name reserved for a limited liability company  
10.4 may transfer the reservation to another person by filing with the secretary of state for filing  
10.5 a signed notice of the transfer which states the name and address of the transferee.

10.6 Sec. 10. **[322C.0110] OPERATING AGREEMENT; SCOPE, FUNCTION, AND**  
10.7 **LIMITATIONS.**

10.8 Subdivision 1. **Operating agreement.** Except as otherwise provided in subdivisions  
10.9 2 and 3, the operating agreement governs:

10.10 (1) relations among the members as members and between the members and the  
10.11 limited liability company;

10.12 (2) the rights and duties under this chapter of a person in the capacity of manager or  
10.13 governor;

10.14 (3) the activities of the company and the conduct of those activities; and

10.15 (4) the means and conditions for amending the operating agreement.

10.16 Subd. 2. **Default rules supplementing operating agreement.** To the extent the  
10.17 operating agreement does not otherwise provide for a matter described in subdivision 1,  
10.18 this chapter governs the matter.

10.19 Subd. 3. **Restrictions.** An operating agreement may not:

10.20 (1) vary a limited liability company's capacity under section 322C.0105 to sue and  
10.21 be sued in its own name;

10.22 (2) vary the law applicable under section 322C.0106;

10.23 (3) vary the power of the court under section 322C.0204;

10.24 (4) subject to subdivisions 4 to 7, eliminate the duty of loyalty, the duty of care, or  
10.25 any other fiduciary duty;

10.26 (5) subject to subdivisions 4 to 7, eliminate the contractual obligation of good faith  
10.27 and fair dealing under section 322C.0409, subdivision 4;

10.28 (6) unreasonably restrict the duties and rights stated in section 322C.0410;

10.29 (7) vary the power of a court to decree dissolution in the circumstances specified  
10.30 in section 322C.0701, subdivision 1, clauses (4) and (5);

10.31 (8) vary the requirement to wind up a limited liability company's business as  
10.32 specified in section 322C.0702, subdivisions 1 and 2, clause (1);

10.33 (9) unreasonably restrict the right of a member to maintain an action under sections  
10.34 322C.0901 to 322C.0906;

11.1 (10) restrict the right to approve a merger, conversion, or domestication under  
11.2 section 322C.1015 to a member that will have personal liability with respect to a surviving,  
11.3 converted, or domesticated organization; or

11.4 (11) except as otherwise provided in section 322C.0112, subdivision 2, restrict the  
11.5 rights under this chapter of a person other than a member, manager, or governor.

11.6 **Subd. 4. Provisions particularly but not exclusively authorized.** If not manifestly  
11.7 unreasonable, and without limiting the terms that may be included in an operating  
11.8 agreement, the operating agreement may:

11.9 (1) restrict or eliminate the duty:

11.10 (i) as required in section 322C.0409, subdivisions 2, clause (1), and 7, to account to  
11.11 the limited liability company and to hold as trustee for it any property, profit, or benefit  
11.12 derived by the member in the conduct or winding up of the company's business, from a  
11.13 use by the member of the company's property, or from the appropriation of a limited  
11.14 liability company opportunity;

11.15 (ii) as required in section 322C.0409, subdivisions 2, clause (2), and 7, to refrain  
11.16 from dealing with the company in the conduct or winding up of the company's business as  
11.17 or on behalf of a party having an interest adverse to the company; and

11.18 (iii) as required by section 322C.0409, subdivisions 2, clause (3), and 7, to refrain  
11.19 from competing with the company in the conduct of the company's business before the  
11.20 dissolution of the company;

11.21 (2) identify specific types or categories of activities that do not violate the duty  
11.22 of loyalty;

11.23 (3) alter the duty of care, except to authorize intentional misconduct or knowing  
11.24 violation of law;

11.25 (4) alter any other fiduciary duty, including eliminating particular aspects of that  
11.26 duty; and

11.27 (5) prescribe the standards by which to measure the performance of the contractual  
11.28 obligation of good faith and fair dealing under section 322C.0409, subdivision 4.

11.29 **Subd. 5. Duty of loyalty, authorization and ratification of otherwise violative**  
11.30 **conduct.** The operating agreement may specify the method by which a specific act or  
11.31 transaction that would otherwise violate the duty of loyalty may be authorized or ratified by  
11.32 one or more disinterested and independent persons after full disclosure of all material facts.

11.33 **Subd. 6. Eliminating fiduciary duty when responsibility eliminated.** To the extent  
11.34 the operating agreement of a member-managed limited liability company expressly relieves  
11.35 a member of a responsibility that the member would otherwise have under this chapter and  
11.36 imposes the responsibility on one or more other members, the operating agreement may,

12.1 to the benefit of the member that the operating agreement relieves of the responsibility,  
 12.2 also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

12.3 Subd. 7. **Indemnification and exculpation.** The operating agreement may alter or  
 12.4 eliminate the indemnification for a member, manager, or governor provided by section  
 12.5 322C.0408, subdivision 1, and may eliminate or limit a member's, manager's, or governor's  
 12.6 liability to the limited liability company and members for money damages, except for:

12.7 (1) breach of the duty of loyalty;

12.8 (2) a financial benefit received by the member or manager to which the member or  
 12.9 manager is not entitled;

12.10 (3) a breach of a duty under section 322C.0406;

12.11 (4) intentional infliction of harm on the company or a member; or

12.12 (5) an intentional violation of criminal law.

12.13 Subd. 8. **Determining whether term is manifestly unreasonable.** The court shall  
 12.14 decide any claim under subdivision 4 that a term of an operating agreement is manifestly  
 12.15 unreasonable. The court:

12.16 (1) shall make its determination as of the time the challenged term became part of  
 12.17 the operating agreement and by considering only circumstances existing at that time; and

12.18 (2) may invalidate the term only if, in light of the purposes and activities of the  
 12.19 limited liability company, it is readily apparent that:

12.20 (i) the objective of the term is unreasonable; or

12.21 (ii) the term is an unreasonable means to achieve the provision's objective.

12.22 **Sec. 11. [322C.0111] OPERATING AGREEMENT; EFFECT ON LIMITED**  
 12.23 **LIABILITY COMPANY AND PERSONS BECOMING MEMBERS;**  
 12.24 **PREFORMATION AGREEMENT.**

12.25 Subdivision 1. **Company's assent not required.** A limited liability company is  
 12.26 bound by and may enforce the operating agreement, whether or not the company has itself  
 12.27 manifested assent to the operating agreement.

12.28 Subd. 2. **Deemed assent by all members.** A person that becomes a member of a  
 12.29 limited liability company is deemed to assent to the operating agreement.

12.30 Subd. 3. **Preformation agreement.** Two or more persons intending to become the  
 12.31 initial members of a limited liability company may make an agreement providing that  
 12.32 upon the formation of the company the agreement will become the operating agreement.  
 12.33 One person intending to become the initial member of a limited liability company may  
 12.34 assent to terms providing that upon the formation of the company the terms will become  
 12.35 the operating agreement.

13.1       Sec. 12. **[322C.0112] OPERATING AGREEMENT; EFFECT ON THIRD**  
13.2 **PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF**  
13.3 **LIMITED LIABILITY COMPANY.**

13.4           Subdivision 1. Approval of third party. An operating agreement may specify  
13.5 that its amendment requires the approval of a person that is not a party to the operating  
13.6 agreement or the satisfaction of a condition. An amendment is ineffective if its adoption  
13.7 does not include the required approval or satisfy the specified condition.

13.8           Subd. 2. Transferees and dissociated members. The obligations of a limited  
13.9 liability company and its members to a person in the person's capacity as a transferee or  
13.10 dissociated member are governed by the operating agreement. Subject only to any court  
13.11 order issued under section 322C.0503, subdivision 2, clause (2), to effectuate a charging  
13.12 order, an amendment to the operating agreement made after a person becomes a transferee  
13.13 or dissociated member is effective with regard to any debt, obligation, or other liability of  
13.14 the limited liability company or its members to the person in the person's capacity as a  
13.15 transferee or dissociated member.

13.16           Subd. 3. Ineffective provisions. If a record that has been delivered by a limited  
13.17 liability company to the secretary of state for filing and has become effective under  
13.18 this chapter contains a provision that would be ineffective under section 322C.0110,  
13.19 subdivision 3, if contained in the operating agreement, the provision is likewise ineffective  
13.20 in the record.

13.21           Subd. 4. Conflicting provisions. Subject to subdivision 3, if a record that has been  
13.22 delivered by a limited liability company to the secretary of state for filing and has become  
13.23 effective under this chapter conflicts with a provision of the operating agreement:

13.24           (1) the operating agreement prevails as to members, dissociated members,  
13.25 transferees, managers, and governors; and

13.26           (2) the record prevails as to other persons to the extent they reasonably rely on  
13.27 the record.

13.28       Sec. 13. **[322C.0113] OFFICE AND AGENT FOR SERVICE OF PROCESS.**

13.29           Every limited liability company shall have a registered office and may have a  
13.30 registered agent, in the manner prescribed by section 5.36.

13.31       Sec. 14. **[322C.0114] CHANGE OF REGISTERED OFFICE OR AGENT FOR**  
13.32 **SERVICE OF PROCESS.**

14.1 Every limited liability company may change its registered office or change its  
14.2 registered agent, and the agent may resign or change its business address or name, in the  
14.3 manner prescribed by section 5.36.

14.4 Sec. 15. **[322C.0115] RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

14.5 Every limited liability company registered agent may resign in the manner  
14.6 prescribed by section 5.36.

14.7 Sec. 16. **[322C.0116] SERVICE OF PROCESS ON LIMITED LIABILITY**  
14.8 **COMPANY.**

14.9 Subdivision 1. **Agent.** An agent for service of process appointed by a limited liability  
14.10 company or foreign limited liability company is an agent of the company for service of  
14.11 any process, notice, or demand required or permitted by law to be served on the company.

14.12 Subd. 2. **Secretary of state.** If a limited liability company or foreign limited  
14.13 liability company does not appoint or maintain an agent for service of process in this  
14.14 state or the agent for service of process cannot with reasonable diligence be found at  
14.15 the agent's street address, the secretary of state is an agent of the company upon whom  
14.16 process, notice, or demand may be served.

14.17 Subd. 3. **Record of service.** A process, notice, or demand required or permitted by  
14.18 law to be served upon a company may be served upon the secretary of state as provided  
14.19 in section 5.25.

14.20 Subd. 4. **Other law not affected.** This section does not affect the right to serve  
14.21 process, notice, or demand in any other manner provided by law.

14.22 Sec. 17. **[322C.0117] LEGAL RECOGNITION OF ELECTRONIC RECORDS**  
14.23 **AND SIGNATURES.**

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

14.26 (b) "Electronic" means relating to technology having electrical, digital, magnetic,  
14.27 wireless, optical, electromagnetic, or similar capabilities.

14.28 (c) "Electronic record" means a record created, generated, sent, communicated,  
14.29 received, or stored by electronic means.

14.30 (d) "Electronic signature" means an electronic sound, symbol, or process attached  
14.31 to or logically associated with a record and executed or adopted by a person with the  
14.32 intent to sign the record.

14.33 Subd. 2. **Electronic records and signatures.** For purposes of this chapter:

- 15.1 (1) a record or signature may not be denied legal effect or enforceability solely  
15.2 because it is in electronic form;
- 15.3 (2) a contract may not be denied legal effect or enforceability solely because an  
15.4 electronic record was used in its formation;
- 15.5 (3) if a provision requires a record to be in writing, an electronic record satisfies  
15.6 the requirement; and
- 15.7 (4) if a provision requires a signature, an electronic signature satisfies the requirement.

15.8 **FORMATION; ARTICLES OF ORGANIZATION AND OTHER FILINGS**

15.9 Sec. 18. **[322C.0201] FORMATION OF LIMITED LIABILITY COMPANY;**  
15.10 **ARTICLES OF ORGANIZATION.**

15.11 Subdivision 1. **Organizers.** One or more persons may act as organizers to form  
15.12 a limited liability company by signing and filing with the secretary of state articles of  
15.13 organization.

15.14 Subd. 2. **Required contents of articles of organization.** Articles of organization  
15.15 must state:

15.16 (1) the name of the limited liability company, which must comply with section  
15.17 322C.0108;

15.18 (2) the street address of the initial registered office and the name and street address  
15.19 of the initial agent for service of process of the company; and

15.20 (3) the name and street address of each organizer.

15.21 Subd. 3. **Optional contents of articles of organization.** Subject to section  
15.22 322C.0112, subdivision 3, articles of organization may also contain statements as to  
15.23 matters other than those required by subdivision 2. However, a statement in articles of  
15.24 organization is not effective as a statement of authority.

15.25 Subd. 4. **Formation.** (a) A limited liability company is formed when articles of  
15.26 organization have been filed with the secretary of state.

15.27 (b) Except in a proceeding by this state to dissolve a limited liability company, the  
15.28 filing of the articles of organization by the secretary of state is conclusive proof that the  
15.29 organizer satisfied all conditions to the formation of a limited liability company.

15.30 (c) The formation of a limited liability company does not by itself cause any person  
15.31 to become a member. However, this chapter does not preclude an agreement, made before  
15.32 or after formation of a limited liability company, which provides that one or more persons  
15.33 will become members, or acknowledging that one or more persons became members,  
15.34 upon or otherwise in connection with the formation of the limited liability company.

16.1       Sec. 19. **[322C.0202] AMENDMENT OR RESTATEMENT OF ARTICLES OF**  
16.2 **ORGANIZATION.**

16.3       Subdivision 1. **Timing of amendment.** Articles of organization may be amended or  
16.4 restated at any time.

16.5       Subd. 2. **Amendment procedure.** To amend its articles of organization, a limited  
16.6 liability company must file with the secretary of state an amendment stating:

16.7       (1) the name of the company;

16.8       (2) the changes the amendment makes to the articles of organization as most recently  
16.9 amended or restated; and

16.10       (3) a statement that the amendment was adopted pursuant to this chapter.

16.11       Subd. 3. **Restatement.** To restate its articles of organization, a limited liability  
16.12 company must file with the secretary of state a restatement, designated as such in its  
16.13 heading, stating:

16.14       (1) in the heading or an introductory paragraph, the company's present name; and

16.15       (2) the changes the restatement makes to the articles of organization as most recently  
16.16 amended or restated.

16.17       Subd. 4. **Date of effectuation.** Subject to sections 322C.0112, subdivision 3, and  
16.18 322C.0205, subdivision 3, an amendment to or restatement of articles of organization is  
16.19 effective when filed with the secretary of state.

16.20       Subd. 5. **Inaccurate information.** If a member of a member-managed limited  
16.21 liability company, a manager of a manager-managed limited liability company, or a  
16.22 governor of a board-managed limited liability company, knows that any information in  
16.23 articles of organization filed with the secretary of state was inaccurate when the articles  
16.24 were filed or has become inaccurate owing to changed circumstances, the member,  
16.25 manager, or governor shall promptly:

16.26       (1) cause the articles to be amended; or

16.27       (2) if appropriate, file with the secretary of state a change of registered office under  
16.28 section 322C.0114.

16.29       Sec. 20. **[322C.0203] SIGNING OF RECORDS TO BE FILED WITH**  
16.30 **SECRETARY OF STATE.**

16.31       Subdivision 1. **Signing requirements.** A record filed with the secretary of state  
16.32 pursuant to this chapter must be signed as follows:

16.33       (1) Except as otherwise provided in clauses (2) through (4), a record signed on behalf  
16.34 of a limited liability company must be signed by a person authorized by the company.



17.1 (2) A limited liability company's initial articles of organization must be signed by  
17.2 at least one person acting as an organizer.

17.3 (3) A notice under section 322C.0201, subdivision 5, clause (1), must be signed  
17.4 by an organizer.

17.5 (4) A record filed on behalf of a dissolved limited liability company that has no  
17.6 members must be signed by the person winding up the company's activities under section  
17.7 322C.0702, subdivision 3, or a person appointed under section 322C.0702, subdivision 4,  
17.8 to wind up those activities.

17.9 (5) A statement of cancellation under section 322C.0201, subdivision 4, clause  
17.10 (2), must be signed by each organizer that signed the initial articles of organization, but  
17.11 a personal representative of a deceased or incompetent organizer may sign in the place  
17.12 of the decedent or incompetent.

17.13 (6) A statement of denial by a person under section 322C.0303 must be signed  
17.14 by that person.

17.15 (7) Any other record must be signed by the person on whose behalf the record is  
17.16 filed with the secretary of state.

17.17 Subd. 2. **Signing by agent.** Any record filed under this chapter may be signed by an  
17.18 agent pursuant to section 5.15.

17.19 **Sec. 21. [322C.0204] SIGNING AND FILING PURSUANT TO JUDICIAL**  
17.20 **ORDER.**

17.21 Subdivision 1. **Process.** If a person required by this chapter to sign a record or file  
17.22 a record with the secretary of state does not do so, any other person that is aggrieved  
17.23 may petition the appropriate court to order:

17.24 (1) the person to sign the record;

17.25 (2) the person to file the record with the secretary of state for filing; or

17.26 (3) the secretary of state to file the record unsigned.

17.27 Subd. 2. **Joinder of limited liability company.** If a petitioner under subdivision  
17.28 1 is not the limited liability company or foreign limited liability company to which the  
17.29 record pertains, the petitioner shall make the company a party to the action.

17.30 **Sec. 22. [322C.0205] FILING OF RECORDS WITH SECRETARY OF STATE;**  
17.31 **EFFECTIVE TIME AND DATE.**

17.32 Subdivision 1. **Delivery requirements.** A record authorized or required to be filed  
17.33 with the secretary of state under this chapter must be captioned to describe the record's  
17.34 purpose, be in a medium permitted by the secretary of state, and be delivered to the

18.1 secretary of state. If the filing fees have been paid, unless the secretary of state determines  
18.2 that a record does not comply with the filing requirements of this chapter, the secretary  
18.3 of state shall file the record and:

18.4 (1) for a statement of denial under section 322C.0303, send an image of the filed  
18.5 statement and a receipt for the fees to the person on whose behalf the statement was  
18.6 delivered for filing and to the limited liability company; and

18.7 (2) for all other records, send a copy of the filed record and a receipt for the fees to  
18.8 the person on whose behalf the record was filed.

18.9 Subd. 2. **Certified copy to requester.** Upon request and payment of the requisite  
18.10 fee, the secretary of state shall send to the requester a certified copy of a requested record.

18.11 Subd. 3. **Effective date and time.** Except as otherwise provided in sections  
18.12 322C.0115, 322C.0201, subdivision 4, paragraph (a), and 322C.0206, a record filed with  
18.13 the secretary of state under this chapter may specify an effective time and a delayed  
18.14 effective date. Subject to sections 322C.0115, 322C.0201, subdivision 4, paragraph (a),  
18.15 and 322C.0206, a record filed with the secretary of state is effective:

18.16 (1) if the record does not specify either an effective time or a delayed effective date,  
18.17 on the date and at the time the record is filed as evidenced by the secretary of state's  
18.18 endorsement of the date and time on the record;

18.19 (2) if the record specifies an effective time but not a delayed effective date, on the  
18.20 date the record is filed at the time specified in the record;

18.21 (3) if the record specifies a delayed effective date but not an effective time, at 12:01  
18.22 a.m. on the earlier of:

18.23 (i) the specified date; or

18.24 (ii) the 90th day after the record is filed; or

18.25 (4) if the record specifies an effective time and a delayed effective date, at the  
18.26 specified time on the earlier of:

18.27 (i) the specified date; or

18.28 (ii) the 90th day after the record is filed.

18.29 **Sec. 23. [322C.0206] LIABILITY FOR INACCURATE INFORMATION IN**  
18.30 **FILED RECORD.**

18.31 Subdivision 1. **Persons liable.** If a record filed with the secretary of state under this  
18.32 chapter contains inaccurate information, a person that suffers a loss by reliance on the  
18.33 information may recover damages for the loss from:

18.34 (1) a person that signed the record, or caused another to sign it on the person's  
18.35 behalf, and knew the information to be inaccurate at the time the record was signed; and

19.1 (2) subject to subdivision 2, a member of a member-managed limited liability  
19.2 company or the manager of a manager-managed limited liability company, if:

19.3 (i) the record was filed with the secretary of state on behalf of the company; and

19.4 (ii) the member or manager had notice of the inaccuracy for a reasonably sufficient  
19.5 time before the information was relied upon so that, before the reliance, the member or  
19.6 manager reasonably could have:

19.7 (A) effected an amendment under section 322C.0202;

19.8 (B) filed a petition under section 322C.0204; or

19.9 (C) filed with the secretary of state a statement of change under section 322C.0114  
19.10 or a statement of correction under section 322C.0206.

19.11 Subd. 2. **Excepted members.** To the extent that the operating agreement of a  
19.12 member-managed limited liability company expressly relieves a member of responsibility  
19.13 for maintaining the accuracy of information contained in records filed with the secretary  
19.14 of state under this chapter and imposes that responsibility on one or more other members,  
19.15 the liability stated in subdivision 1, clause (2), applies to those other members and not to  
19.16 the member that the operating agreement relieves of the responsibility.

19.17 Subd. 3. **Penalty of perjury.** An individual who signs a record authorized or  
19.18 required to be filed under this chapter affirms under penalty of perjury that the information  
19.19 stated in the record is accurate.

19.20 Sec. 24. **[322C.0207] CERTIFICATE OF EXISTENCE OR AUTHORIZATION.**

19.21 The secretary of state, upon request and payment of the requisite fee, shall furnish to  
19.22 any person a certificate of existence for a limited liability company pursuant to section 5.12.

19.23 Sec. 25. **[322C.0208] ANNUAL REPORT FOR SECRETARY OF STATE.**

19.24 (a) The secretary of state may send annually to each limited liability company,  
19.25 using the information provided by the limited liability company and foreign limited  
19.26 liability company pursuant to section 5.002 or 5.34 or the articles of organization, a notice  
19.27 announcing the need to file the annual renewal and informing the limited liability company  
19.28 that the annual renewal may be filed online and that paper filings may also be made, and  
19.29 informing the limited liability company that failing to file the annual renewal will result  
19.30 in an administrative termination of the limited liability company or the revocation of  
19.31 the authority of the limited liability company and foreign limited liability company to  
19.32 do business in Minnesota.

19.33 (b) Each calendar year beginning in the calendar year following the calendar year in  
19.34 which a limited liability company and foreign limited liability company files articles of

20.1 organization, a limited liability company and foreign limited liability company must file  
20.2 with the secretary of state by December 31 of each calendar year a renewal containing the  
20.3 items required by section 5.34.

20.4 **RELATIONS OF MEMBERS, MANAGERS, AND GOVERNORS TO PERSONS**  
20.5 **DEALING WITH LIMITED LIABILITY COMPANY**

20.6 Sec. 26. **[322C.0301] NO AGENCY POWER OF MEMBER AS MEMBER.**

20.7 Subdivision 1. **No automatic agency.** A member is not an agent of a limited liability  
20.8 company solely by reason of being a member.

20.9 Subd. 2. **Other law not affected.** A person's status as a member does not prevent or  
20.10 restrict law other than this chapter from imposing liability on a limited liability company  
20.11 because of the person's conduct.

20.12 Sec. 27. **[322C.0302] STATEMENT OF AUTHORITY.**

20.13 Subdivision 1. **Filing of statement with secretary of state; contents.** A limited  
20.14 liability company may file with the secretary of state a statement of authority. The  
20.15 statement:

20.16 (1) must include the name of the company and the street address of its registered  
20.17 office;

20.18 (2) with respect to any position that exists in or with respect to the company, may  
20.19 state the authority, or limitations on the authority, of all persons holding the position to:

20.20 (i) execute an instrument transferring real property held in the name of the company;

20.21 or

20.22 (ii) enter into other transactions on behalf of, or otherwise act for or bind, the  
20.23 company; and

20.24 (3) may state the authority, or limitations on the authority, of a specific person to:

20.25 (i) execute an instrument transferring real property held in the name of the company;

20.26 or

20.27 (ii) enter into other transactions on behalf of, or otherwise act for or bind, the  
20.28 company.

20.29 Subd. 2. **Amendment or cancellation of statement.** To amend or cancel  
20.30 a statement of authority filed with the secretary of state under section 322C.0205,  
20.31 subdivision 1, a limited liability company must file with the secretary of state an  
20.32 amendment or cancellation stating:

20.33 (1) the name of the company;

20.34 (2) the street address of the company's registered office;

21.1 (3) the caption of the statement being amended or canceled and the date the  
21.2 statement being affected became effective; and

21.3 (4) the contents of the amendment or a declaration that the statement being affected  
21.4 is canceled.

21.5 Subd. 3. **Statements effective only as to nonmembers.** A statement of authority  
21.6 affects only the power of a person to bind a limited liability company to persons that are  
21.7 not members.

21.8 Subd. 4. **Limitations of authority.** Subject to subdivision 3 and section 322C.0103,  
21.9 subdivision 4, and except as otherwise provided in subdivisions 6, 7, and 8, a limitation on  
21.10 the authority of a person or a position contained in an effective statement of authority is  
21.11 not by itself evidence of knowledge or notice of the limitation by any person.

21.12 Subd. 5. **Authority to transfer property other than real property.** Subject to  
21.13 subdivision 3, a grant of authority not pertaining to transfers of real property and contained  
21.14 in an effective statement of authority is conclusive in favor of a person that gives value in  
21.15 reliance on the grant, except to the extent that when the person gives value:

21.16 (1) the person has knowledge to the contrary;

21.17 (2) the statement has been canceled or restrictively amended under subdivision 2; or

21.18 (3) a limitation on the grant is contained in another statement of authority that  
21.19 became effective after the statement containing the grant became effective.

21.20 Subd. 6. **Authority to transfer real property.** Subject to subdivision 3, an  
21.21 effective statement of authority that grants authority to transfer real property held in the  
21.22 name of the limited liability company, whether or not a certified copy of the statement is  
21.23 recorded in the real property records, is conclusive in favor of a person that gives value in  
21.24 reliance on the grant without knowledge to the contrary, except to the extent that when  
21.25 the person gives value:

21.26 (1) the statement has been canceled or restrictively amended under subdivision 2  
21.27 and a certified copy of the cancellation or restrictive amendment has been recorded in the  
21.28 real property records; or

21.29 (2) a limitation on the grant is contained in another statement of authority that  
21.30 became effective after the statement containing the grant became effective and a certified  
21.31 copy of the later-effective statement is recorded in the real property records.

21.32 Subd. 7. **Recording; constructive notice regarding real property.** Subject to  
21.33 subdivision 3, if a certified copy of an effective statement containing a limitation on  
21.34 the authority to transfer real property held in the name of a limited liability company is  
21.35 recorded in the real property records, all persons are deemed to know of the limitation.

22.1 Subd. 8. **Statements of dissolution or termination.** Subject to subdivision 9, an  
22.2 effective statement of dissolution or termination is a cancellation of any filed statement  
22.3 of authority for the purposes of subdivision 6 and is a limitation on authority for the  
22.4 purposes of subdivision 7.

22.5 Subd. 9. **Postdissolution statements.** After a statement of dissolution becomes  
22.6 effective, a limited liability company may file with the secretary of state and, if  
22.7 appropriate, may record in the real property records, a statement of authority that is  
22.8 designated as a postdissolution statement of authority. The statement operates as provided  
22.9 in subdivisions 6 and 7.

22.10 Subd. 10. **Statement of denial.** An effective statement of denial operates as a  
22.11 restrictive amendment under this section and may be recorded by certified copy in the real  
22.12 property records for the purposes of subdivision 6, clause (1).

22.13 **Sec. 28. [322C.0303] STATEMENT OF DENIAL.**

22.14 A person named in a filed statement of authority granting that person authority may  
22.15 file with the secretary of state for filing a statement of denial that:

- 22.16 (1) provides the name of the limited liability company and the caption of the  
22.17 statement of authority to which the statement of denial pertains; and  
22.18 (2) denies the grant of authority.

22.19 **Sec. 29. [322C.0304] LIABILITY OF MEMBERS, MANAGERS, AND**  
22.20 **GOVERNORS.**

22.21 Subdivision 1. **Liability shield for members, managers, and governors.** The  
22.22 debts, obligations, or other liabilities of a limited liability company, whether arising in  
22.23 contract, tort, or otherwise:

- 22.24 (1) are solely the debts, obligations, or other liabilities of the company; and  
22.25 (2) do not become the debts, obligations, or other liabilities of a member, manager,  
22.26 or governor solely by reason of the member acting as a member, manager acting as a  
22.27 manager, or governor acting as a governor.

22.28 Subd. 2. **Effect of lack of formalities.** The failure of a limited liability company to  
22.29 observe formalities relating exclusively to the management of its internal affairs is not  
22.30 a ground for imposing liability on the members, managers, or governors for the debts,  
22.31 obligations, or other liabilities of the company.

22.32 Subd. 3. **Piercing the veil.** Except as relates to the failure of a limited liability  
22.33 company to observe any formalities relating exclusively to the management of its internal  
22.34 affairs, the case law that states the conditions and circumstances under which the corporate

23.1 veil of a corporation may be pierced under Minnesota law also applies to limited liability  
23.2 companies.

23.3 **RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED**  
23.4 **LIABILITY COMPANY**

23.5 **Sec. 30. [322C.0401] BECOMING A MEMBER.**

23.6 Subdivision 1. **One initial member.** If a limited liability company is to have only  
23.7 one member upon formation, the person becomes a member as agreed by that person and  
23.8 the organizer of the company. That person and the organizer may be, but need not be,  
23.9 different persons. If different, the organizer acts on behalf of the initial member.

23.10 Subd. 2. **Multiple initial members.** If a limited liability company is to have more  
23.11 than one member upon formation, those persons become members as agreed by the  
23.12 persons before the formation of the company. The organizer acts on behalf of the persons  
23.13 in forming the company and may be, but need not be, one of the persons.

23.14 Subd. 3. **Shelf limited liability company.** If a limited liability company is to have  
23.15 no members upon formation, a person becomes an initial member of the limited liability  
23.16 company with the consent of a majority of the organizers. The organizers may consent to  
23.17 more than one person simultaneously becoming the company's initial members.

23.18 Subd. 4. **Subsequent members.** After a limited liability company has or has had at  
23.19 least one member, a person becomes a member:

23.20 (1) as provided in the operating agreement;

23.21 (2) as the result of a transaction effective under sections 322C.1001 to 322C.1015;

23.22 (3) with the consent of all the members; or

23.23 (4) if, within 90 consecutive days after the company ceases to have any members:

23.24 (i) the last person to have been a member, or the legal representative of that person,  
23.25 designates a person to become a member; and

23.26 (ii) the designated person consents to become a member.

23.27 Subd. 5. **Neither transferable interest nor contribution required.** A person may  
23.28 become a member without acquiring a transferable interest and without making or being  
23.29 obligated to make a contribution to the limited liability company.

23.30 **Sec. 31. [322C.0402] FORM OF CONTRIBUTION.**

23.31 A contribution may consist of tangible or intangible property or other benefit to a  
23.32 limited liability company, including money, services performed, promissory notes, other  
23.33 agreements to contribute money or property, and contracts for services to be performed.

24.1 Sec. 32. **[322C.0403] LIABILITY FOR CONTRIBUTIONS.**

24.2 Subdivision 1. **Impracticability no excuse.** A person's obligation to make a  
24.3 contribution to a limited liability company is not excused by the person's death, disability,  
24.4 or other inability to perform personally. If a person does not make a required contribution,  
24.5 the person or the person's estate is obligated to contribute money equal to the value of the  
24.6 part of the contribution which has not been made, at the option of the company.

24.7 Subd. 2. **Creditor enforcement.** A creditor of a limited liability company which  
24.8 extends credit or otherwise acts in reliance on an obligation described in subdivision 1  
24.9 may enforce the obligation.

24.10 Sec. 33. **[322C.0404] SHARING OF AND RIGHT TO DISTRIBUTIONS**  
24.11 **BEFORE DISSOLUTION.**

24.12 Subdivision 1. **Equal distributions.** Any distributions made by a limited liability  
24.13 company before its dissolution and winding up must be in equal shares among members and  
24.14 dissociated members, except to the extent necessary to comply with any transfer effective  
24.15 under section 322C.0502 and any charging order in effect under section 322C.0503.

24.16 Subd. 2. **Interim distributions.** A person has a right to a distribution before the  
24.17 dissolution and winding up of a limited liability company only if the company decides  
24.18 to make an interim distribution. A person's dissociation does not entitle the person to  
24.19 a distribution.

24.20 Subd. 3. **Form of distributions.** A person does not have a right to demand or receive  
24.21 a distribution from a limited liability company in any form other than money. Except as  
24.22 otherwise provided in section 322C.0707, subdivision 3, a limited liability company may  
24.23 distribute an asset in kind if each part of the asset is fungible with each other part and each  
24.24 person receives a percentage of the asset equal in value to the person's share of distributions.

24.25 Subd. 4. **Parity with creditors.** If a member or transferee becomes entitled to receive  
24.26 a distribution, the member or transferee has the status of, and is entitled to all remedies  
24.27 available to, a creditor of the limited liability company with respect to the distribution.

24.28 Sec. 34. **[322C.0405] LIMITATIONS ON DISTRIBUTION.**

24.29 Subdivision 1. **Distribution restrictions.** A limited liability company may not  
24.30 make a distribution if after the distribution:

24.31 (1) the company would not be able to pay its debts as they become due in the  
24.32 ordinary course of the company's activities; or

24.33 (2) the company's total assets would be less than the sum of its total liabilities plus  
24.34 the amount that would be needed, if the company were to be dissolved, wound up, and



25.1 terminated at the time of the distribution, to satisfy the preferential rights upon dissolution,  
25.2 winding up, and termination of members whose preferential rights are superior to those of  
25.3 persons receiving the distribution.

25.4 Subd. 2. **Basis for decision.** A limited liability company may base a determination  
25.5 that a distribution is not prohibited under subdivision 1 on financial statements prepared  
25.6 on the basis of accounting practices and principles that are reasonable in the circumstances  
25.7 or on a fair valuation or other method that is reasonable under the circumstances.

25.8 Subd. 3. **Effect of distribution.** Except as otherwise provided in subdivision 6, the  
25.9 effect of a distribution under subdivision 1 is measured:

25.10 (1) in the case of a distribution by purchase, redemption, or other acquisition of a  
25.11 transferable interest in the company, as of the date money or other property is transferred  
25.12 or debt incurred by the company; and

25.13 (2) in all other cases, as of the date:

25.14 (i) the distribution is authorized, if the payment occurs within 120 days after that  
25.15 date; or

25.16 (ii) the payment is made, if the payment occurs more than 120 days after the  
25.17 distribution is authorized.

25.18 Subd. 4. **Equivalent to unsecured creditors.** A limited liability company's  
25.19 indebtedness to a member incurred by reason of a distribution made according to this  
25.20 section is at parity with the company's indebtedness to its general, unsecured creditors.

25.21 Subd. 5. **Exclusion from calculated indebtedness.** A limited liability company's  
25.22 indebtedness, including indebtedness issued in connection with or as part of a distribution,  
25.23 is not a liability for purposes of subdivision 1 if the terms of the indebtedness provide that  
25.24 payment of principal and interest are made only to the extent that a distribution could  
25.25 be made to members under this section.

25.26 Subd. 6. **Indebtedness as distribution.** If indebtedness is issued as a distribution,  
25.27 each payment of principal or interest on the indebtedness is treated as a distribution, the  
25.28 effect of which is measured on the date the payment is made.

25.29 Subd. 7. **Compensation not distribution.** In subdivision 1, "distribution" does not  
25.30 include amounts constituting reasonable compensation for present or past services or  
25.31 reasonable payments made in the ordinary course of business under a bona fide retirement  
25.32 plan or other benefits program.

25.33 Sec. 35. **[322C.0406] LIABILITY FOR IMPROPER DISTRIBUTIONS.**

25.34 Subdivision 1. **Personal liability for decision makers.** Except as otherwise  
25.35 provided in subdivision 2, if a member of a member-managed limited liability

26.1 company, manager of a manager-managed limited liability company, or governor of a  
 26.2 board-managed limited liability company consents to a distribution made in violation of  
 26.3 section 322C.0405 and in consenting to the distribution fails to comply with section  
 26.4 322C.0409, the member, manager, or governor is personally liable to the company for  
 26.5 the amount of the distribution that exceeds the amount that could have been distributed  
 26.6 without the violation of section 322C.0405.

26.7 Subd. 2. **Liability exception.** To the extent the operating agreement of a  
 26.8 member-managed limited liability company expressly relieves a member of the authority  
 26.9 and responsibility to consent to distributions and imposes that authority and responsibility  
 26.10 on one or more other members, the liability stated in subdivision 1 applies to the other  
 26.11 members and not the member that the operating agreement relieves of authority and  
 26.12 responsibility.

26.13 Subd. 3. **Liability of recipients.** A person that receives a distribution knowing that  
 26.14 the distribution to that person was made in violation of section 322C.0405 is personally  
 26.15 liable to the limited liability company but only to the extent that the distribution received  
 26.16 by the person exceeded the amount that could have been properly paid under section  
 26.17 322C.0405.

26.18 Subd. 4. **Impleading.** A person against which an action is commenced because the  
 26.19 person is liable under subdivision 1 may:

26.20 (1) implead any other person that is subject to liability under subdivision 1 and seek  
 26.21 to compel pro rata contribution from the person in that action to the extent of the person's  
 26.22 liability as provided in section 322C.0406, subdivision 1; and

26.23 (2) implead any person that received a distribution in violation of section 322C.0405  
 26.24 and seek to compel contribution from the person in the amount by which the distribution  
 26.25 received by the person exceeded the amount that could have been properly paid under  
 26.26 section 322C.0405.

26.27 Subd. 5. **Statute of limitations.** An action under this section is barred if not  
 26.28 commenced within two years after the distribution.

26.29 **Sec. 36. [322C.0407] MANAGEMENT OF LIMITED LIABILITY COMPANY.**

26.30 Subdivision 1. **Member-managed default.** A limited liability company is a  
 26.31 member-managed limited liability company unless the operating agreement:

26.32 (1) expressly provides that:

26.33 (i) the company is or will be "manager-managed" or "board-managed";

26.34 (ii) the company is or will be "managed by managers" or "managed by a board"; or

27.1 (iii) management of the company is or will be "vested in managers" or "vested  
27.2 in a board"; or

27.3 (2) includes words of similar import.

27.4 Subd. 2. **Member-managed company rules.** In a member-managed limited  
27.5 liability company, the following rules apply:

27.6 (1) The management and conduct of the company are vested in the members.

27.7 (2) Each member has equal rights in the management and conduct of the company's  
27.8 activities.

27.9 (3) A difference arising among members as to a matter in the ordinary course of the  
27.10 activities of the company may be decided by a majority of the members.

27.11 (4) An act outside the ordinary course of the activities of the company may be  
27.12 undertaken only with the consent of all members.

27.13 (5) The operating agreement may be amended only with the consent of all members.

27.14 Subd. 3. **Manager-managed company rules.** In a manager-managed limited  
27.15 liability company, the following rules apply:

27.16 (1) Except as otherwise expressly provided in this chapter, any matter relating to the  
27.17 activities of the company is decided exclusively by the managers.

27.18 (2) Each manager has equal rights in the management and conduct of the activities  
27.19 of the company.

27.20 (3) A difference arising among managers as to a matter in the ordinary course of the  
27.21 activities of the company may be decided by a majority of the managers.

27.22 (4) The consent of all members is required to:

27.23 (i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the  
27.24 company's property, with or without the good will, outside the ordinary course of the  
27.25 company's activities;

27.26 (ii) approve a merger, conversion, or domestication under sections 322C.1001 to  
27.27 322C.1015;

27.28 (iii) undertake any other act outside the ordinary course of the company's activities;

27.29 and

27.30 (iv) amend the operating agreement.

27.31 (5) A manager may be chosen at any time by the consent of a majority of the  
27.32 members and remains a manager until a successor has been chosen, unless the manager  
27.33 at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not  
27.34 an individual, terminates. A manager may be removed at any time by the consent of a  
27.35 majority of the members without notice or cause.

28.1 (6) A person need not be a member to be a manager, but the dissociation of a  
28.2 member that is also a manager removes the person as a manager. If a person that is both a  
28.3 manager and a member ceases to be a manager, that cessation does not by itself dissociate  
28.4 the person as a member.

28.5 (7) A person's ceasing to be a manager does not discharge any debt, obligation, or  
28.6 other liability to the limited liability company or members which the person incurred  
28.7 while a manager.

28.8 Subd. 4. **Board-managed company rules.** In a board-managed limited liability  
28.9 company, the following rules apply:

28.10 (1) The activities and affairs of a limited liability company are to be managed by and  
28.11 under the direction of a board of governors, which shall consist of one or more governors  
28.12 as determined by members holding a majority of the voting power of the members. Except  
28.13 as specifically stated in this subdivision and section 322C.0204, subdivision 5:

28.14 (i) the board acts only through an act of the board;

28.15 (ii) no individual governor has any right or power to act for the limited liability  
28.16 company; and

28.17 (iii) only officers, managers, or other agents designated by the board or through a  
28.18 process approved by the board have the right to act for the limited liability company, and  
28.19 that right extends only to the extent consistent with the terms of the designation.

28.20 (2) A governor must be a natural person. A person need not be a member to be a  
28.21 governor, but the dissociation of a member who is also a governor disqualifies the person  
28.22 as a governor. If a person who is both a governor and a member ceases to be a governor,  
28.23 that cessation does not by itself dissociate the person as a member. A person's ceasing  
28.24 to be a governor does not discharge any debt, obligation, or other liability to the limited  
28.25 liability company or members which the person incurred while a governor.

28.26 (3) The method of election and any additional qualifications for governors will  
28.27 be as determined by members holding a majority of the voting power of the members.  
28.28 Governors are elected by a plurality of the voting power present and entitled to vote on the  
28.29 election of governors at a duly called or held meeting at which a quorum is present.

28.30 (4) A member may waive notice of a meeting for the election of governors. A  
28.31 member's waiver of notice under this clause is effective whether given before, at, or after  
28.32 the meeting, and whether given in a record, orally, or by attendance. Attendance by a  
28.33 member at a meeting for election of governors is a waiver of notice of that meeting,  
28.34 except where the member objects at the beginning of the meeting to the transaction of  
28.35 business because the meeting is not lawfully called or convened and does not participate  
28.36 in the meeting after the objection.

29.1 (5) Once elected, a governor holds office for the term for which the governor  
29.2 was elected and until a successor is elected, or until the earlier death, resignation,  
29.3 disqualification, or removal of the governor. A governor may resign at any time. A  
29.4 governor may be removed at any time, without cause and without advance notice, by a  
29.5 majority of the voting power of all of the members. The existence of vacancies does not  
29.6 affect the power of the board to function if at least one governor remains in office.

29.7 (6) When a vacancy occurs, the limited liability company shall immediately notify  
29.8 all members in a record of the vacancy, stating the cause of the vacancy and the date the  
29.9 notice is sent. Within 30 days of that date, the members may fill the vacancy in the same  
29.10 method the members may elect governors under clause (3). If the vacancy is not filled  
29.11 by the members under this clause, the vacancy may be filled by the affirmative vote of a  
29.12 majority of the remaining governors, even though less than a quorum.

29.13 (7) The board shall meet from time to time as determined by members holding a  
29.14 majority of the voting power of the members, at a place decided by the board. If the day  
29.15 or date, time, and place of a board of governors meeting have been provided in a board  
29.16 resolution, or announced at a previous meeting of the board of governors, no notice is  
29.17 required. Notice of an adjourned meeting need not be given other than by announcement  
29.18 at the meeting at which adjournment is taken. If notice is required for a meeting, notice  
29.19 shall be made in the manner stated in clause (8).

29.20 (8) A governor may call a board meeting by giving at least ten days' notice in a  
29.21 record to all governors of the date, time, and place of the meeting. The notice need not  
29.22 state the purpose of the meeting. As to each governor, the notice is effective when given.

29.23 (i) Notice may be:

29.24 (A) mailed to the governor at an address designated by the person or at the last  
29.25 known address of the person;

29.26 (B) deposited with a nationally recognized overnight delivery service for overnight  
29.27 delivery or, if overnight delivery to the governor is not available, for delivery as promptly  
29.28 as practicable to the governor at an address designated by the governor or at the last  
29.29 known address of the governor;

29.30 (C) communicated to the governor orally;

29.31 (D) handed to the governor;

29.32 (E) given by facsimile communication, electronic mail, or any other form of  
29.33 electronic communication, if the governor has consented in a record to receive notice  
29.34 by such means; or

29.35 (F) by any other means determined by members holding a majority of the voting  
29.36 power of the members.

30.1 (ii) The notice is deemed given if by:

30.2 (A) mail, when deposited in the United States mail with sufficient postage affixed;

30.3 (B) by deposit for delivery, when deposited for delivery as provided in item (i),  
30.4 subitem (B), with delivery charges prepaid or otherwise provided for by the sender;

30.5 (C) facsimile communication, when directed to a telephone number at which the  
30.6 governor has consented in a record to receive notice;

30.7 (D) electronic mail, when directed to an electronic mail address at which the  
30.8 governor has consented in a record to receive notice; and

30.9 (E) any other form of electronic communication by which the governor has  
30.10 consented in a record to receive notice, when directed to the governor.

30.11 (9) A governor may waive notice of a meeting of the board of governors. A waiver  
30.12 of notice by a governor entitled to notice is effective whether given before, at, or after the  
30.13 meeting, and whether given in a record, orally, or by attendance. Attendance by a governor  
30.14 at a meeting is a waiver of notice of that meeting, except where the governor objects at the  
30.15 beginning of the meeting to the transaction of business because the meeting is not lawfully  
30.16 called or convened and does not participate in the meeting after the objection.

30.17 (10) A majority of the governors currently holding office is a quorum for the  
30.18 transaction of business. When a quorum is present at a duly called or held meeting of  
30.19 the board, the vote of a majority of the directors present constitutes an act of the board.  
30.20 If a quorum is present when a duly called or held meeting is convened, the governors  
30.21 present may continue to transact business until adjournment, even though the withdrawal  
30.22 of a number of governors originally present leaves less than the proportion or number  
30.23 otherwise required for a quorum.

30.24 (11) Any meeting among governors may be conducted solely by one or more means  
30.25 of remote communication through which all of the governors may participate with each  
30.26 other during the meeting, if the number of governors participating in the meeting would  
30.27 be sufficient to constitute a quorum. Participation in a meeting by that means constitutes  
30.28 presence in person at the meeting.

30.29 (12) A governor may participate in a board of governors meeting by means of  
30.30 remote communication, through which the governor, other governors so participating, and  
30.31 all governors physically present at the meeting may participate with each other during  
30.32 the meeting. Participation in a meeting by that means constitutes presence in person  
30.33 at the meeting.

30.34 (13) An action required or permitted to be taken at a board meeting may be taken  
30.35 by written action signed by the number of governors that would be required to take the  
30.36 same action at a meeting of the board of governors at which all governors were present.

31.1 The written action is effective when signed by the required number of governors, unless a  
31.2 different effective time is provided in the written action. When written action is permitted  
31.3 to be taken by less than all governors, all governors must be notified immediately of its  
31.4 text and effective date. Failure to provide the notice does not invalidate the written action.  
31.5 A governor who does not sign or consent to the written action has no liability for the  
31.6 action or actions taken by the written action.

31.7 (14) If the board designates a person as "chief manager," "president," "chief  
31.8 executive officer," "CEO," or another title of similar import, that person shall:

31.9 (i) serve as an agent of the limited liability company at the will of the board, without  
31.10 prejudice to any rights the person may have under a contract with the limited liability  
31.11 company;

31.12 (ii) have general active management of the business of the limited liability company,  
31.13 subject to the supervision and control of the board;

31.14 (iii) see that all orders and resolutions of the board of governors are carried into effect;

31.15 (iv) sign and deliver in the name of the limited liability company any deeds,  
31.16 mortgages, bonds, contracts, or other instruments pertaining to the business of the limited  
31.17 liability company, except in cases in which the authority to sign and deliver is required by  
31.18 law to be exercised by another person or is expressly delegated by the board of governors  
31.19 to some other officer or agent of the limited liability company;

31.20 (v) maintain records of and, whenever necessary, certify all proceedings of the  
31.21 board of governors and the members; and

31.22 (vi) perform other duties prescribed by the board of governors.

31.23 (15) If the board designates a person as "treasurer," "chief financial officer," "CFO,"  
31.24 or another title of similar import, that person shall:

31.25 (i) serve as an agent of the limited liability company at the will of the board, without  
31.26 prejudice to any rights the person may have under a contract with the limited liability  
31.27 company;

31.28 (ii) keep accurate financial records for the limited liability company;

31.29 (iii) deposit all money, drafts, and checks in the name of and to the credit of the limited  
31.30 liability company in the banks and depositories designated by the board of governors;

31.31 (iv) endorse for deposit all notes, checks, and drafts received by the limited liability  
31.32 company as ordered by the board of governors, making proper vouchers for them;

31.33 (v) disburse limited liability company funds and issue checks and drafts in the name  
31.34 of the limited liability company, as ordered by the board of governors;

32.1 (vi) give to the chief executive officer and the board of governors, whenever  
32.2 requested, an account of all transactions by the chief financial officer and of the financial  
32.3 condition of the limited liability company; and

32.4 (vii) perform other duties prescribed by the board of governors or by the chief  
32.5 executive officer.

32.6 (16) The consent of all members is required to:

32.7 (i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the  
32.8 company's property, with or without the good will, outside the ordinary course of the  
32.9 company's activities;

32.10 (ii) approve a merger, conversion, or domestication under sections 322C.1001 to  
32.11 322C.1015; and

32.12 (iii) amend the operating agreement.

32.13 (17) For purposes of this subdivision, each member possesses voting power in  
32.14 proportion to the member's interest in then current profits of the limited liability company  
32.15 and a majority of the voting power of the members is a quorum at a meeting of the members.

32.16 Subd. 5. **Member consent.** Any member may demand a meeting of the members to  
32.17 take action requiring consent of members under this chapter upon not less than 20 days'  
32.18 notice to each member in a record of the date and time of the meeting. Any meeting held  
32.19 upon member notice shall be held at the limited liability company's principal office if  
32.20 located within this state, and at the registered office if the principal office is not located  
32.21 within the state. Any action requiring the consent of members under this chapter may be  
32.22 taken or approved without a meeting by the written consent of the members holding the  
32.23 voting power required to take such action at a duly called meeting at which all members  
32.24 were present. A member may appoint a proxy or other agent to consent or otherwise act  
32.25 for the member by signing an appointing record, personally or by the member's agent.

32.26 Subd. 6. **Impact of dissolution.** The dissolution of a limited liability company does  
32.27 not affect the applicability of this section. However, a person that wrongfully causes  
32.28 dissolution of the company loses the right to participate in management in any capacity.

32.29 Subd. 7. **Remuneration.** This chapter does not entitle a member to remuneration  
32.30 for services performed for a member-managed limited liability company, except for  
32.31 reasonable compensation for services rendered in winding up the activities of the company.

32.32 **Sec. 37. [322C.0408] INDEMNIFICATION AND INSURANCE.**

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



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

33.5 (c) "Official capacity" means (1) with respect to a member of a member-managed  
33.6 company, a manager of a manager-managed company, or a governor of a board-managed  
33.7 company, actions taken in that capacity, (2) with respect to a person other than a member  
33.8 of a member-managed company, a manager of a manager-managed company, or a  
33.9 governor of a board-managed company, the elective or appointive office or position  
33.10 held by a manager or officer, member of a committee of the board of governors, the  
33.11 employment relationship undertaken by an employee of the limited liability company, or  
33.12 the scope of the services provided by members of the limited liability company who  
33.13 provide services to the limited liability company, and (3) with respect to a governor,  
33.14 manager, member, or employee of the limited liability company who, while a member,  
33.15 governor, manager, or employee of the limited liability company, is or was serving at  
33.16 the request of the limited liability company or whose duties in that position involve or  
33.17 involved service as a governor, director, manager, officer, member, partner, trustee,  
33.18 employee, or agent of another organization or employee benefit plan, the position of that  
33.19 person as a governor, director, manager, officer, member, partner, trustee, employee, or  
33.20 agent, as the case may be, of the other organization or employee benefit plan.

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

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

33.29 Subd. 2. **Indemnification.** (a) Subject to the provisions of subdivision 4, a limited  
33.30 liability company shall indemnify a person made or threatened to be made a party to a  
33.31 proceeding by reason of the former or present official capacity of the person against  
33.32 judgments, penalties, fines, including, without limitation, excise taxes assessed against the  
33.33 person with respect to an employee benefit plan, settlements, and reasonable expenses,  
33.34 including attorney fees and disbursements, incurred by the person in connection with the  
33.35 proceeding, if, with respect to the acts or omissions of the person complained of in the  
33.36 proceeding, the person:

34.1 (1) has not been indemnified by another organization or employee benefit plan for  
34.2 the same judgments, penalties, fines, including, without limitation, excise taxes assessed  
34.3 against the person with respect to an employee benefit plan, settlements, and reasonable  
34.4 expenses, including attorney fees and disbursements, incurred by the person in connection  
34.5 with the proceeding with respect to the same acts or omissions;

34.6 (2) acted in good faith;

34.7 (3) received no improper personal benefit and complied with the duties stated in  
34.8 sections 322C.0405 and 322C.0409, if applicable;

34.9 (4) in the case of a criminal proceeding, had no reasonable cause to believe the  
34.10 conduct was unlawful; and

34.11 (5) in the case of acts or omissions occurring in the official capacity described in  
34.12 subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was  
34.13 in the best interests of the limited liability company, or in the case of acts or omissions  
34.14 occurring in the official capacity described in subdivision 1, paragraph (c), clause (3),  
34.15 reasonably believed that the conduct was not opposed to the best interests of the limited  
34.16 liability company. If the person's acts or omissions complained of in the proceeding relate  
34.17 to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan,  
34.18 the conduct is not considered to be opposed to the best interests of the limited liability  
34.19 company if the person reasonably believed that the conduct was in the best interests of the  
34.20 participants or beneficiaries of the employee benefit plan.

34.21 (b) The termination of a proceeding by judgment, order, settlement, conviction, or  
34.22 upon a plea of nolo contendere or its equivalent does not, of itself, establish that the  
34.23 person did not meet the criteria set forth in this subdivision.

34.24 Subd. 3. **Advances.** Subject to the provisions of subdivision 4, if a person is made  
34.25 or threatened to be made a party to a proceeding, the person is entitled, upon written  
34.26 request to the limited liability company, to payment or reimbursement by the limited  
34.27 liability company of reasonable expenses, including attorney fees and disbursements,  
34.28 incurred by the person in advance of the final disposition of the proceeding:

34.29 (1) upon receipt by the limited liability company of a written affirmation by the  
34.30 person of a good faith belief that the criteria for indemnification in subdivision 2 have  
34.31 been satisfied and a written undertaking by the person to repay all amounts so paid or  
34.32 reimbursed by the limited liability company, if it is ultimately determined that the criteria  
34.33 for indemnification have not been satisfied; and

34.34 (2) after a determination that the facts then known to those making the determination  
34.35 would not preclude indemnification under this section.

35.1 The written undertaking required by clause (1) is an unlimited general obligation of  
35.2 the person making it, but need not be secured and shall be accepted without reference to  
35.3 financial ability to make the repayment.

35.4 Subd. 4. **Prohibition or limit on indemnification or advances.** The articles of  
35.5 organization or the operating agreement either may prohibit indemnification or advances of  
35.6 expenses otherwise required by this section or may impose conditions on indemnification  
35.7 or advances of expenses in addition to the conditions contained in subdivisions 2 and 3  
35.8 including, without limitation, monetary limits on indemnification or advances of expenses,  
35.9 if the conditions apply equally to all persons or to all persons within a given class. A  
35.10 prohibition or limit on indemnification or advances may not apply to or affect the right  
35.11 of a person to indemnification or advances of expenses with respect to any acts or  
35.12 omissions of the person occurring before the effective date of a provision in the articles of  
35.13 organization, a member control agreement, or the date of adoption of a provision in the  
35.14 bylaws establishing the prohibition or limit on indemnification or advances.

35.15 Subd. 5. **Reimbursement to witnesses.** This section does not require, or limit the  
35.16 ability of, a limited liability company to reimburse expenses, including attorney fees  
35.17 and disbursements, incurred by a person in connection with an appearance as a witness  
35.18 in a proceeding at a time when the person has not been made or threatened to be made  
35.19 a party to a proceeding.

35.20 Subd. 6. **Determination of eligibility.** (a) All determinations whether  
35.21 indemnification of a person is required because the criteria in subdivision 2 have been  
35.22 satisfied and whether a person is entitled to payment or reimbursement of expenses in  
35.23 advance of the final disposition of a proceeding as provided in subdivision 3 must be made:

35.24 (1) in a board-managed limited liability company:

35.25 (i) by the board of governors by a majority of a quorum, provided that governors  
35.26 who are, at the time, parties to the proceeding shall not be counted for determining either  
35.27 a majority or the presence of a quorum;

35.28 (ii) if a quorum under item (i) cannot be obtained, by a majority of a committee of  
35.29 the board of governors, consisting solely of two or more governors not at the time parties  
35.30 to the proceeding, duly designated to act in the matter by a majority of the full board of  
35.31 governors including governors who are parties; and

35.32 (iii) if a determination is not made under item (i) or (ii), by special legal counsel,  
35.33 selected either by a majority of the board of governors or a committee by vote pursuant  
35.34 to item (i) or (ii) or, if the requisite quorum of the full board of governors cannot be  
35.35 obtained and the committee cannot be established, by a majority of the full board of  
35.36 governors including governors who are parties;

36.1 (2) in all other cases, by the affirmative vote of the members, with each member  
36.2 having voting power in proportion to the member's interest in then current profits of the  
36.3 limited liability company, but the membership interests held by parties to the proceeding  
36.4 must not be counted in determining the presence of a quorum and are not considered to be  
36.5 present and entitled to vote on the determination; or

36.6 (3) if an adverse determination is made under clauses (1) or (2), or if no  
36.7 determination is made under clauses (1) or (2) within 60 days after (i) the later to occur  
36.8 of the termination of a proceeding or a written request for indemnification to the limited  
36.9 liability company or (ii) a written request for an advance of expenses, as the case may be,  
36.10 by a court in this state, which may be the same court in which the proceeding involving  
36.11 the person's liability took place, upon application of the person and any notice the  
36.12 court requires. The person seeking indemnification or payment or reimbursement of  
36.13 expenses pursuant to this clause has the burden of establishing that the person is entitled to  
36.14 indemnification or payment or reimbursement of expenses.

36.15 (b) With respect to a person who is not, and was not at the time of the acts or  
36.16 omissions complained of in the proceedings, a member, governor, manager, or person  
36.17 possessing, directly or indirectly, the power to direct or cause the direction of the  
36.18 management or policies of the limited liability company, the determination whether  
36.19 indemnification of this person is required because the criteria set forth in subdivision 2  
36.20 have been satisfied and whether this person is entitled to payment or reimbursement of  
36.21 expenses in advance of the final disposition of a proceeding as provided in subdivision 3  
36.22 may be made (i) in a board-managed limited liability company, by an annually appointed  
36.23 committee of the board of governors, having at least one member who is a governor, which  
36.24 committee shall report at least annually to the board of governors concerning its actions  
36.25 and (ii) in all other cases by a committee appointed annually by the members, having at  
36.26 least one committee member who is a member of the limited liability company, which  
36.27 committee shall report at least annually to the board of governors concerning its actions.

36.28 Subd. 7. **Insurance.** A limited liability company may purchase and maintain  
36.29 insurance on behalf of a member, manager, or governor of the company against liability  
36.30 asserted against or incurred by the member, manager, or governor in that capacity or  
36.31 arising from that status even if, under section 322C.0110, subdivision 7, the operating  
36.32 agreement could not eliminate or limit the person's liability to the company for the conduct  
36.33 giving rise to the liability and whether or not the limited liability company would have  
36.34 been required to indemnify the person against the liability under this section.

36.35 Subd. 8. **Disclosure.** A limited liability company that indemnifies or advances  
36.36 expenses to a person according to this section in connection with a proceeding by or on

37.1 behalf of the limited liability company shall report to the members in writing the amount  
37.2 of the indemnification or advance and to whom and on whose behalf it was paid not  
37.3 later than the next meeting of members.

37.4 Subd. 9. **Indemnification of other persons.** Nothing in this section must be  
37.5 construed to limit the power of the limited liability company to indemnify persons other  
37.6 than a governor, manager, member, employee, or member of a committee of the board  
37.7 of the limited liability company, by contract or otherwise.

37.8 Sec. 38. **[322C.0409] STANDARDS OF CONDUCT FOR MEMBERS,**  
37.9 **MANAGERS, AND GOVERNORS.**

37.10 Subdivision 1. **Scope of duties.** A member of a member-managed limited liability  
37.11 company owes to the company and, subject to section 322C.0901, subdivision 2, the other  
37.12 members the fiduciary duties of loyalty and care stated in subdivisions 2 and 3.

37.13 Subd. 2. **Duty of loyalty.** The duty of loyalty of a member in a member-managed  
37.14 limited liability company includes the duties:

37.15 (1) to account to the company and to hold as trustee for it any property, profit, or  
37.16 benefit derived by the member:

37.17 (i) in the conduct or winding up of the company's activities;

37.18 (ii) from a use by the member of the company's property; or

37.19 (iii) from the appropriation of a limited liability company opportunity;

37.20 (2) to refrain from dealing with the company in the conduct or winding up of  
37.21 the company's activities as or on behalf of a person having an interest adverse to the  
37.22 company; and

37.23 (3) to refrain from competing with the company in the conduct of the company's  
37.24 activities before the dissolution of the company.

37.25 Subd. 3. **Duty of care.** Subject to the business judgment rule, the duty of care of a  
37.26 member of a member-managed limited liability company in the conduct and winding up  
37.27 of the company's activities is to act with the care that a person in a like position would  
37.28 reasonably exercise under similar circumstances and in a manner the member reasonably  
37.29 believes to be in the best interests of the company. In discharging this duty, a member  
37.30 may rely in good faith on opinions, reports, statements, or other information provided by  
37.31 another person that the member reasonably believes is a competent and reliable source  
37.32 for the information.

37.33 Subd. 4. **Contractual obligation of good faith and fair dealing.** A member in  
37.34 a limited liability company shall discharge the member's duties and exercise any rights  
37.35 under this chapter or under the operating agreement consistently with the contractual

38.1 obligation of good faith and fair dealing, including acting in a manner, in light of the  
38.2 operating agreement, that is honest, fair, and reasonable.

38.3 Subd. 5. **Fairness defense.** It is a defense to a claim under subdivision 2, clause  
38.4 (2), and any comparable claim in equity or at common law that the transaction was fair  
38.5 to the limited liability company.

38.6 Subd. 6. **Authorization and ratification.** All of the members of a member-managed  
38.7 limited liability company or a manager-managed limited liability company may authorize  
38.8 or ratify, after full disclosure of all material facts, a specific act or transaction that  
38.9 otherwise would violate the duty of loyalty.

38.10 Subd. 7. **Manager-managed company rules.** In a manager-managed limited  
38.11 liability company, the following rules apply:

38.12 (1) Subdivisions 1, 2, 3, and 5 apply to the manager or managers and not the members.

38.13 (2) The duty stated under subdivision 2, clause (3), continues until winding up  
38.14 is completed.

38.15 (3) Subdivision 4 applies to the members and managers.

38.16 (4) Subdivision 6 applies only to the members.

38.17 (5) A member does not have any fiduciary duty to the company or to any other  
38.18 member solely by reason of being a member.

38.19 Subd. 8. **Board-managed company rules.** In a board-managed limited liability  
38.20 company, the following rules apply:

38.21 (1) Subdivisions 1, 2, 3, and 5 apply to the governors and not the members.

38.22 (2) The duty stated under subdivision 2, clause (3), continues until winding up  
38.23 is completed.

38.24 (3) Subdivision 4 applies to the members and governors.

38.25 (4) Subdivision 6 applies only to the members.

38.26 (5) A member does not have any fiduciary duty to the company or to any other  
38.27 member solely by reason of being a member.

38.28 Sec. 39. **[322C.0410] RIGHT OF MEMBERS, MANAGERS, GOVERNORS,**  
38.29 **AND DISSOCIATED MEMBERS TO INFORMATION.**

38.30 Subdivision 1. **Member-managed company rules.** In a member-managed limited  
38.31 liability company, the following rules apply:

38.32 (1) On reasonable notice, a member may inspect and copy during regular business  
38.33 hours, at a reasonable location specified by the company, any record maintained by the  
38.34 company regarding the company's activities, financial condition, and other circumstances,

39.1 to the extent the information is material to the member's rights and duties under the  
39.2 operating agreement or this chapter.

39.3 (2) The company shall furnish to each member:

39.4 (i) without demand, any information concerning the company's activities, financial  
39.5 condition, and other circumstances which the company knows and is material to the  
39.6 proper exercise of the member's rights and duties under the operating agreement or this  
39.7 chapter, except to the extent the company can establish that it reasonably believes the  
39.8 member already knows the information; and

39.9 (ii) on demand, any other information concerning the company's activities, financial  
39.10 condition, and other circumstances, except to the extent the demand or information  
39.11 demand is unreasonable or otherwise improper under the circumstances.

39.12 (3) The duty to furnish information under clause (2) also applies to each member to  
39.13 the extent the member knows any of the information described in clause (2).

39.14 Subd. 2. **Manager-managed and board-managed company rules.** In a  
39.15 manager-managed limited liability company, the following rules apply:

39.16 (1) The informational rights stated in subdivision 1 and the duty stated in subdivision  
39.17 1, clause (3), apply to the managers or governors and not the members.

39.18 (2) During regular business hours and at a reasonable location specified by the  
39.19 company, a member may obtain from the company and inspect and copy full information  
39.20 regarding the activities, financial condition, and other circumstances of the company as  
39.21 is just and reasonable if:

39.22 (i) the member seeks the information for a purpose material to the member's interest  
39.23 as a member;

39.24 (ii) the member makes a demand in a record received by the company, describing  
39.25 with reasonable particularity the information sought and the purpose for seeking the  
39.26 information; and

39.27 (iii) the information sought is directly connected to the member's purpose.

39.28 (3) Within ten days after receiving a demand pursuant to clause (2), item (ii), the  
39.29 company shall in a record inform the member that made the demand:

39.30 (i) of the information that the company will provide in response to the demand and  
39.31 when and where the company will provide the information; and

39.32 (ii) if the company declines to provide any demanded information, the company's  
39.33 reasons for declining.

39.34 (4) Whenever this chapter or an operating agreement provides for a member to give  
39.35 or withhold consent to a matter, before the consent is given or withheld, the company

40.1 shall, without demand, provide the member with all information that is known to the  
40.2 company and is material to the member's decision.

40.3 Subd. 3. **Dissociated member access.** On ten days' demand made in a record  
40.4 received by a limited liability company, a dissociated member may have access to  
40.5 information to which the person was entitled while a member if the information pertains to  
40.6 the period during which the person was a member, the person seeks the information in  
40.7 good faith, and the person satisfies the requirements imposed on a member by subdivision  
40.8 2, clause (2). The company shall respond to a demand made pursuant to this subdivision  
40.9 in the manner provided in subdivision 2, clause (3).

40.10 Subd. 4. **Access costs.** A limited liability company may charge a person that makes  
40.11 a demand under this section the reasonable costs of copying, limited to the costs of labor  
40.12 and material.

40.13 Subd. 5. **Agent use.** A member or dissociated member may exercise rights under  
40.14 this section through an agent or, in the case of an individual under legal disability, a  
40.15 legal representative. Any restriction or condition imposed by the operating agreement or  
40.16 under subdivision 7 applies both to the agent or legal representative and the member  
40.17 or dissociated member.

40.18 Subd. 6. **Transferee excluded.** The rights under this section do not extend to a  
40.19 person as transferee.

40.20 Subd. 7. **Reasonable restrictions to access.** In addition to any restriction or  
40.21 condition stated in its operating agreement, a limited liability company, as a matter within  
40.22 the ordinary course of its activities, may impose reasonable restrictions and conditions on  
40.23 access to and use of information to be furnished under this section, including designating  
40.24 information confidential and imposing nondisclosure and safeguarding obligations on  
40.25 the recipient. In a dispute concerning the reasonableness of a restriction under this  
40.26 subdivision, the company has the burden of proving reasonableness.

40.27 **TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES**  
40.28 **AND CREDITORS**

40.29 **Sec. 40. [322C.0501] NATURE OF TRANSFERABLE INTEREST.**

40.30 A transferable interest is personal property.

40.31 **Sec. 41. [322C.0502] TRANSFER OF TRANSFERABLE INTEREST.**

40.32 Subdivision 1. **Transfers.** A transfer, in whole or in part, of a transferable interest:  
40.33 (1) is permissible;



41.1 (2) does not by itself cause a member's dissociation or a dissolution and winding up  
41.2 of the limited liability company's activities; and

41.3 (3) subject to section 322C.0504, does not entitle the transferee to:

41.4 (i) participate in the management or conduct of the company's activities; or

41.5 (ii) except as otherwise provided in subdivision 3, have access to records or other  
41.6 information concerning the company's activities.

41.7 Subd. 2. **Transferee right to distributions.** A transferee has the right to receive,  
41.8 in accordance with the transfer, distributions to which the transferor would otherwise  
41.9 be entitled.

41.10 Subd. 3. **Transferee right to an account.** In a dissolution and winding up of  
41.11 a limited liability company, a transferee is entitled to an account of the company's  
41.12 transactions only from the date of dissolution.

41.13 Subd. 4. **Evidence of interest.** A transferable interest may be evidenced by a  
41.14 certificate of the interest issued by the limited liability company in a record, and, subject  
41.15 to this section, the interest represented by the certificate may be transferred by a transfer of  
41.16 the certificate.

41.17 Subd. 5. **Company notice required.** A limited liability company need not give  
41.18 effect to a transferee's rights under this section until the company has notice of the transfer.

41.19 Subd. 6. **Violative transfers ineffective.** A transfer of a transferable interest in  
41.20 violation of a restriction on transfer contained in the operating agreement is ineffective as  
41.21 to a person having notice of the restriction at the time of transfer.

41.22 Subd. 7. **Rights retained.** Except as otherwise provided in section 322C.0602,  
41.23 clause (4), item (ii), when a member transfers a transferable interest, the transferor retains  
41.24 the rights of a member other than the interest in distributions transferred and retains all  
41.25 duties and obligations of a member.

41.26 Subd. 8. **Transferee liability.** When a member transfers a transferable interest to a  
41.27 person that becomes a member with respect to the transferred interest, the transferee is  
41.28 liable for the member's obligations under sections 322C.0403 and 322C.0406, subdivision  
41.29 3, known to the transferee when the transferee becomes a member.

41.30 **Sec. 42. [322C.0503] CHARGING ORDER.**

41.31 Subdivision 1. **Charging order against transferable interest.** On application  
41.32 by a judgment creditor of a member or transferee, a court may enter a charging order  
41.33 against the transferable interest of the judgment debtor for the unsatisfied amount of the  
41.34 judgment. A charging order constitutes a lien on a judgment debtor's transferable interest

42.1 and requires the limited liability company to pay over to the person to which the charging  
 42.2 order was issued any distribution that would otherwise be paid to the judgment debtor.

42.3 Subd. 2. **Charging order effectuation.** To the extent necessary to effectuate the  
 42.4 collection of distributions pursuant to a charging order in effect under subdivision 1,  
 42.5 the court may:

42.6 (1) appoint a receiver of the distributions subject to the charging order, with the  
 42.7 power to make all inquiries the judgment debtor might have made; and

42.8 (2) make all other orders necessary to give effect to the charging order.

42.9 Subd. 3. **Foreclosure and sale.** Upon a showing that distributions under a charging  
 42.10 order will not pay the judgment debt within a reasonable time, the court may foreclose  
 42.11 the lien and order the sale of the transferable interest. The purchaser at the foreclosure  
 42.12 sale obtains only the transferable interest, does not thereby become a member, and is  
 42.13 subject to section 322C.0502.

42.14 Subd. 4. **Extinguishing charging order.** At any time before foreclosure under  
 42.15 subdivision 3, the member or transferee whose transferable interest is subject to a charging  
 42.16 order under subdivision 1 may extinguish the charging order by satisfying the judgment  
 42.17 and filing a certified copy of the satisfaction with the court that issued the charging order.

42.18 Subd. 5. **Succession to rights of judgment creditor.** At any time before  
 42.19 foreclosure under subdivision 3, a limited liability company or one or more members  
 42.20 whose transferable interests are not subject to the charging order may pay to the judgment  
 42.21 creditor the full amount due under the judgment and thereby succeed to the rights of the  
 42.22 judgment creditor, including the charging order.

42.23 Subd. 6. **Exemption laws applicable.** This chapter does not deprive any member or  
 42.24 transferee of the benefit of any exemption laws applicable to the member's or transferee's  
 42.25 transferable interest.

42.26 Subd. 7. **Exclusive remedy.** This section provides the exclusive remedy by which a  
 42.27 person seeking to enforce a judgment against a member or transferee may, in the capacity  
 42.28 of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

42.29 Sec. 43. **[322C.0504] POWER OF PERSONAL REPRESENTATIVE OF**  
 42.30 **DECEASED MEMBER.**

42.31 If a member dies, the deceased member's personal representative or other legal  
 42.32 representative may exercise the rights of a transferee provided in section 322C.0502,  
 42.33 subdivision 3, and, for the purposes of settling the estate, the rights of a current member  
 42.34 under section 322C.0410.

42.35 **MEMBER'S DISSOCIATION**

43.1 Sec. 44. **[322C.0601] MEMBER'S POWER TO DISSOCIATE; WRONGFUL**  
43.2 **DISSOCIATION.**

43.3 Subdivision 1. **Power to dissociate.** A person has the power to dissociate as a  
43.4 member at any time, rightfully or wrongfully, by withdrawing as a member by express  
43.5 will under section 322C.0602, clause (1).

43.6 Subd. 2. **Wrongful dissociation.** A person's dissociation from a limited liability  
43.7 company is wrongful only if the dissociation:

43.8 (1) is in breach of an express provision of the operating agreement; or

43.9 (2) occurs before the termination of the company and:

43.10 (i) the person withdraws as a member by express will;

43.11 (ii) the person is expelled as a member by judicial order under section 322C.0602,  
43.12 clause (5);

43.13 (iii) the person is dissociated under section 322C.0602, clause (7), item (i), by  
43.14 becoming a debtor in bankruptcy; or

43.15 (iv) in the case of a person that is not a trust other than a business trust, an estate,  
43.16 or an individual, the person is expelled or otherwise dissociated as a member because it  
43.17 willfully dissolved or terminated.

43.18 Subd. 3. **Liability for wrongful dissociation.** A person that wrongfully dissociates  
43.19 as a member is liable to the limited liability company and, subject to section 322C.0901,  
43.20 to the other members for damages caused by the dissociation. The liability is in addition  
43.21 to any other debt, obligation, or other liability of the member to the company or the other  
43.22 members.

43.23 Sec. 45. **[322C.0602] EVENTS CAUSING DISSOCIATION.**

43.24 A person is dissociated as a member from a limited liability company when:

43.25 (1) the company has notice of the person's express will to withdraw as a member,  
43.26 but, if the person specified a withdrawal date later than the date the company had notice,  
43.27 on that later date;

43.28 (2) an event stated in the operating agreement as causing the person's dissociation  
43.29 occurs;

43.30 (3) the person is expelled as a member pursuant to the operating agreement;

43.31 (4) the person is expelled as a member by the unanimous consent of the other  
43.32 members if:

43.33 (i) it is unlawful to carry on the company's activities with the person as a member;

43.34 (ii) there has been a transfer of all of the person's transferable interest in the  
43.35 company, other than:

- 44.1 (A) a transfer for security purposes; or
- 44.2 (B) a charging order in effect under section 322C.0503 which has not been foreclosed;
- 44.3 (iii) the person is a corporation and, within 90 days after the company notifies the
- 44.4 person that it will be expelled as a member because the person has filed a certificate of
- 44.5 dissolution or the equivalent, its charter has been revoked, or its right to conduct business
- 44.6 has been suspended by the jurisdiction of its incorporation, the certificate of dissolution
- 44.7 has not been revoked or its charter or right to conduct business has not been reinstated; or
- 44.8 (iv) the person is a limited liability company or partnership that has been dissolved
- 44.9 and whose business is being wound up;
- 44.10 (5) on application by the company, the person is expelled as a member by judicial
- 44.11 order because the person:
- 44.12 (i) has engaged, or is engaging, in wrongful conduct that has adversely and
- 44.13 materially affected, or will adversely and materially affect, the company's activities;
- 44.14 (ii) has willfully or persistently committed, or is willfully and persistently
- 44.15 committing, a material breach of the operating agreement or the person's duties or
- 44.16 obligations under section 322C.0409; or
- 44.17 (iii) has engaged, or is engaging, in conduct relating to the company's activities which
- 44.18 makes it not reasonably practicable to carry on the activities with the person as a member;
- 44.19 (6) in the case of a person who is an individual:
- 44.20 (i) the person dies; or
- 44.21 (ii) in a member-managed limited liability company:
- 44.22 (A) a guardian or general conservator for the person is appointed; or
- 44.23 (B) there is a judicial order that the person has otherwise become incapable of
- 44.24 performing the person's duties as a member under this chapter or the operating agreement;
- 44.25 (7) in a member-managed limited liability company, the person:
- 44.26 (i) becomes a debtor in bankruptcy;
- 44.27 (ii) executes an assignment for the benefit of creditors; or
- 44.28 (iii) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or
- 44.29 liquidator of the person or of all or substantially all of the person's property;
- 44.30 (8) in the case of a person that is a trust or is acting as a member by virtue of being a
- 44.31 trustee of a trust, the trust's entire transferable interest in the company is distributed;
- 44.32 (9) in the case of a person that is an estate or is acting as a member by virtue of
- 44.33 being a personal representative of an estate, the estate's entire transferable interest in the
- 44.34 company is distributed;
- 44.35 (10) in the case of a member that is not an individual, partnership, limited liability
- 44.36 company, corporation, trust, or estate, the termination of the member;

- 45.1 (11) the company participates in a merger under sections 322C.1001 to 322C.1015, if:  
 45.2 (i) the company is not the surviving entity; or  
 45.3 (ii) otherwise as a result of the merger, the person ceases to be a member;  
 45.4 (12) the company participates in a conversion under sections 322C.1001 to  
 45.5 322C.1015;  
 45.6 (13) the company participates in a domestication under sections 322C.1001 to  
 45.7 322C.1015, if, as a result of the domestication, the person ceases to be a member; or  
 45.8 (14) the company terminates.

45.9 **Sec. 46. [322C.0603] EFFECT OF PERSON'S DISSOCIATION AS MEMBER.**

45.10 Subdivision 1. **Effect of dissociation.** When a person is dissociated as a member of  
 45.11 a limited liability company:

45.12 (1) the person's right to participate as a member in the management and conduct of  
 45.13 the company's activities terminates;

45.14 (2) if the company is member-managed, the person's fiduciary duties as a member  
 45.15 end with regard to matters arising and events occurring after the person's dissociation; and

45.16 (3) subject to sections 322C.0504 and 322C.1001 to 322C.1015, any transferable  
 45.17 interest owned by the person immediately before dissociation in the person's capacity as  
 45.18 a member is owned by the person solely as a transferee.

45.19 Subd. 2. **No discharge.** A person's dissociation as a member of a limited liability  
 45.20 company does not of itself discharge the person from any debt, obligation, or other  
 45.21 liability to the company or the other members that the person incurred while a member.

45.22 **DISSOLUTION AND WINDING UP**

45.23 **Sec. 47. [322C.0701] EVENTS CAUSING DISSOLUTION.**

45.24 Subdivision 1. **Dissolution events.** A limited liability company is dissolved, and its  
 45.25 activities must be wound up, upon the occurrence of any of the following:

45.26 (1) an event or circumstance that the operating agreement states causes dissolution;

45.27 (2) the consent of all the members;

45.28 (3) following the admission of the initial member or members, the passage of 90  
 45.29 consecutive days during which the company has no members;

45.30 (4) on application by a member, the entry by appropriate court of an order dissolving  
 45.31 the company on the grounds that:

45.32 (i) the conduct of all or substantially all of the company's activities is unlawful; or

45.33 (ii) it is not reasonably practicable to carry on the company's activities in conformity  
 45.34 with the articles of organization and the operating agreement;

46.1 (5) on application by a member, the entry by appropriate court of an order dissolving  
46.2 the company on the grounds that the managers, governors, or those members in control of  
46.3 the company:

46.4 (i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

46.5 (ii) have acted or are acting in a manner that is oppressive and was, is, or will be  
46.6 directly harmful to the applicant; or

46.7 (6) on application by the attorney general in an action commenced pursuant to  
46.8 section 322C.0708, the entry by appropriate court of an order dissolving the company on  
46.9 grounds specified in 322C.0708.

46.10 Subd. 2. **Alternative remedies.** In a proceeding brought under subdivision 1, clause  
46.11 (5), the court may order a remedy other than dissolution, which may include the sale for  
46.12 fair value of all membership interests a member owns in a limited liability company to  
46.13 the limited liability company or one or more of the other members. A remedy other than  
46.14 dissolution may be ordered in any case where that remedy would be appropriate under all  
46.15 the facts and circumstances of the case.

46.16 Subd. 3. **Venue.** A proceeding brought under subdivision 1, clause (5), must  
46.17 be brought in a court within the county in which the registered office of the limited  
46.18 liability company is located. It is not necessary to make members parties to the action or  
46.19 proceeding unless relief is sought against them personally.

46.20 **Sec. 48. [322C.0702] WINDING UP.**

46.21 Subdivision 1. **Winding up required.** A dissolved limited liability company shall  
46.22 wind up its activities, and the company continues after dissolution only for the purpose  
46.23 of winding up.

46.24 Subd. 2. **Winding up process.** In winding up its activities, a limited liability  
46.25 company:

46.26 (1) shall discharge the company's debts, obligations, or other liabilities, settle and  
46.27 close the company's activities, and marshal and distribute the assets of the company; and

46.28 (2) may:

46.29 (i) file with the secretary of state a statement of dissolution stating the name of the  
46.30 company and that the company is dissolved;

46.31 (ii) preserve the company activities and property as a going concern for a reasonable  
46.32 time;

46.33 (iii) prosecute and defend actions and proceedings, whether civil, criminal, or  
46.34 administrative;

46.35 (iv) transfer the company's property;

47.1 (v) settle disputes by mediation or arbitration;

47.2 (vi) file with the secretary of state a statement of termination stating the name of the  
47.3 company and that the company is terminated; and

47.4 (vii) perform other acts necessary or appropriate to the winding up.

47.5 Subd. 3. **Winding up by legal representative.** If a dissolved limited liability  
47.6 company has no members, the legal representative of the last person to have been a  
47.7 member may wind up the activities of the company. If the person does so, the person has  
47.8 the powers of a sole manager under section 322C.0407, subdivision 3, and is deemed to be  
47.9 a manager for the purposes of section 322C.0304, subdivision 1, clause (2).

47.10 Subd. 4. **Winding up by person other than legal representative.** If the legal  
47.11 representative under subdivision 3 declines or fails to wind up the company's activities, a  
47.12 person may be appointed to do so by the consent of transferees owning a majority of the  
47.13 rights to receive distributions as transferees at the time the consent is to be effective. A  
47.14 person appointed under this subdivision:

47.15 (1) has the powers of a sole manager under section 322C.0407, subdivision 3, and  
47.16 is deemed to be a manager for the purposes of section 322C.0304, subdivision 1, clause  
47.17 (2); and

47.18 (2) shall promptly file with the secretary of state an amendment to the company's  
47.19 articles of organization to:

47.20 (i) state that the company has no members;

47.21 (ii) state that the person has been appointed pursuant to this subdivision to wind up  
47.22 the company; and

47.23 (iii) provide the street address of the person.

47.24 Subd. 5. **Judicial supervision.** The appropriate court may order judicial supervision  
47.25 of the winding up of a dissolved limited liability company, including the appointment of a  
47.26 person to wind up the company's activities:

47.27 (1) on application of a member, if the applicant establishes good cause;

47.28 (2) on the application of a transferee, if:

47.29 (i) the company does not have any members;

47.30 (ii) the legal representative of the last person to have been a member declines or fails  
47.31 to wind up the company's activities; and

47.32 (iii) within a reasonable time following the dissolution a person has not been  
47.33 appointed pursuant to subdivision 4; or

47.34 (3) in connection with a proceeding under section 322C.0701, subdivision 1, clause  
47.35 (4) or (5).

48.1 Sec. 49. **[322C.0703] KNOWN CLAIMS AGAINST DISSOLVED LIMITED**  
48.2 **LIABILITY COMPANY.**

48.3 Subdivision 1. **Notice of known claims.** Except as otherwise provided in  
48.4 subdivision 4, a dissolved limited liability company may give notice of a known claim  
48.5 under subdivision 2 that has the effect as provided in subdivision 3.

48.6 Subd. 2. **Notice requirements.** A dissolved limited liability company may in a  
48.7 record notify its known claimants of the dissolution. The notice must:

48.8 (1) specify the information required to be included in a claim;

48.9 (2) provide a mailing address to which the claim is to be sent;

48.10 (3) state the deadline for receipt of the claim, which may not be less than 120 days  
48.11 after the date the notice is received by the claimant; and

48.12 (4) state that the claim will be barred if not received by the deadline.

48.13 Subd. 3. **Claims barred.** A claim against a dissolved limited liability company is  
48.14 barred if the requirements of subdivision 2 are met and:

48.15 (1) the claim is not received by the specified deadline; or

48.16 (2) if the claim is timely received but rejected by the company:

48.17 (i) the company causes the claimant to receive a notice in a record stating that the  
48.18 claim is rejected and will be barred unless the claimant commences an action against the  
48.19 company to enforce the claim within 90 days after the claimant receives the notice; and

48.20 (ii) the claimant does not commence the required action within the 90 days.

48.21 Subd. 4. **Bar limitation.** This section does not apply to a claim based on an event  
48.22 occurring after the effective date of dissolution or a liability that on that date is contingent.

48.23 Sec. 50. **[322C.0704] OTHER CLAIMS AGAINST DISSOLVED LIMITED**  
48.24 **LIABILITY COMPANY.**

48.25 Subdivision 1. **Publication of notice.** A dissolved limited liability company may  
48.26 publish notice of its dissolution and request persons having claims against the company  
48.27 to present them according to the notice.

48.28 Subd. 2. **Published notice requirements.** The notice authorized by subdivision 1  
48.29 must:

48.30 (1) be published at least once in a newspaper of general circulation in the county or  
48.31 counties in this state in which the dissolved limited liability company's principal office is  
48.32 located or, if it has none in this state, in the county or counties in which the company's  
48.33 registered office is or was last located;

48.34 (2) describe the information required to be contained in a claim and provide a  
48.35 mailing address to which the claim is to be sent; and



49.1 (3) state that a claim against the company is barred unless an action to enforce the  
49.2 claim is commenced within five years after publication of the notice.

49.3 Subd. 3. **Claims barred.** If a dissolved limited liability company publishes a notice  
49.4 according to subdivision 2, unless the claimant commences an action to enforce the claim  
49.5 against the company within five years after the publication date of the notice, the claim of  
49.6 each of the following claimants is barred:

49.7 (1) a claimant that did not receive notice in a record under section 322C.0703;

49.8 (2) a claimant whose claim was timely sent to the company but not acted on; and

49.9 (3) a claimant whose claim is contingent at, or based on an event occurring after,  
49.10 the effective date of dissolution.

49.11 Subd. 4. **Claims enforcement.** A claim not barred under this section may be  
49.12 enforced:

49.13 (1) against a dissolved limited liability company, to the extent of its undistributed  
49.14 assets; and

49.15 (2) if assets of the company have been distributed after dissolution, against a member  
49.16 or transferee to the extent of that person's proportionate share of the claim or of the assets  
49.17 distributed to the member or transferee after dissolution, whichever is less, but a person's  
49.18 total liability for all claims under this clause does not exceed the total amount of assets  
49.19 distributed to the person after dissolution.

49.20 Sec. 51. **[322C.0705] ADMINISTRATIVE DISSOLUTION.**

49.21 (a) A domestic limited liability company that has not filed a renewal pursuant to  
49.22 this section is administratively terminated. The secretary of state shall issue a certificate  
49.23 of administrative termination which must be filed in the Office of the Secretary of State.  
49.24 The secretary of state must also make available in an electronic format the names of  
49.25 the terminated limited liability companies.

49.26 (b) A non-Minnesota limited liability company that has not filed a renewal pursuant to  
49.27 this section shall have its authority to do business in Minnesota revoked pursuant to section  
49.28 322C.0806. The secretary of state must issue a certificate of revocation which must be filed  
49.29 in the Office of the Secretary of State. The secretary of state must also make available in  
49.30 an electronic format the names of the revoked non-Minnesota limited liability companies.

49.31 Sec. 52. **[322C.0706] REINSTATEMENT FOLLOWING ADMINISTRATIVE**  
49.32 **DISSOLUTION.**

50.1 (a) If a limited liability company is administratively terminated or has its authority to  
50.2 do business in Minnesota revoked, it may retroactively reinstate its existence or authority  
50.3 to do business by filing a single annual renewal and paying a \$25 fee.

50.4 (b) For a domestic limited liability company, filing the annual renewal with the  
50.5 secretary of state:

50.6 (1) returns the limited liability company to active status as of the date of the  
50.7 administrative termination;

50.8 (2) validates contracts or other acts within the authority of the articles, and the  
50.9 limited liability company is liable for those contracts or acts; and

50.10 (3) restores to the limited liability company all assets and rights of the limited  
50.11 liability company and its members to the extent they were held by the limited liability  
50.12 company and its members before the administrative termination occurred, except to the  
50.13 extent that assets or rights were affected by acts occurring after the termination, sold, or  
50.14 otherwise distributed after that time.

50.15 (c) For a non-Minnesota limited liability company, filing the annual renewal restores  
50.16 the limited liability company's ability to do business in Minnesota and the rights and  
50.17 privileges that accompany that authority.

50.18 **Sec. 53. [322C.0707] DISTRIBUTION OF ASSETS IN WINDING UP LIMITED**  
50.19 **LIABILITY COMPANY'S ACTIVITIES.**

50.20 Subdivision 1. **Application of assets to discharge obligations.** In winding up its  
50.21 activities, a limited liability company must apply its assets to discharge its obligations to  
50.22 creditors, including members that are creditors.

50.23 Subd. 2. **Distributions of surplus.** After a limited liability company complies  
50.24 with subdivision 1, any surplus must be distributed in the following order, subject to any  
50.25 charging order in effect under section 322C.0503:

50.26 (1) to each person owning a transferable interest that reflects contributions made by  
50.27 a member and not previously returned, an amount equal to the value of the unreturned  
50.28 contributions; and

50.29 (2) in equal shares among members and dissociated members, except to the extent  
50.30 necessary to comply with any transfer effective under section 322C.0502.

50.31 Subd. 3. **Proportionate distribution.** If a limited liability company does not have  
50.32 sufficient surplus to comply with subdivision 2, clause (1), any surplus must be distributed  
50.33 among the owners of transferable interests in proportion to the value of their respective  
50.34 unreturned contributions.

51.1 Subd. 4. **Form of distribution.** All distributions made under subdivisions 2 and 3  
 51.2 must be paid in money.

51.3 Sec. 54. **[322C.0708] ACTION BY ATTORNEY GENERAL.**

51.4 Subdivision 1. **When permitted.** A limited liability company may be involuntarily  
 51.5 dissolved, wound up, and terminated by a decree of a court in this state in an action filed  
 51.6 by the attorney general when it is established that:

51.7 (1) the articles of organization were procured through fraud;

51.8 (2) the limited liability company was organized for a purpose not permitted by  
 51.9 this chapter;

51.10 (3) the limited liability company failed to comply with the requirements essential to  
 51.11 organization under this chapter;

51.12 (4) the limited liability company has flagrantly violated a provision of this chapter,  
 51.13 has violated a provision of this chapter more than once, or has violated more than one  
 51.14 provision of this chapter; or

51.15 (5) the limited liability company has acted, or failed to act, in a manner that constitutes  
 51.16 surrender or abandonment of the limited liability company privileges or enterprise.

51.17 Subd. 2. **Notice to limited liability company and correction.** An action must not  
 51.18 be commenced under this section until 30 days after notice to the limited liability company  
 51.19 by the attorney general of the reason for the filing of the action. If the reason for filing the  
 51.20 action is an act that the limited liability company has done, or omitted to do, and the act or  
 51.21 omission may be corrected by an amendment of the articles of organization, a member  
 51.22 control agreement, or the bylaws or by performance of or abstention from the act, the  
 51.23 attorney general shall give the limited liability company 30 additional days in which to  
 51.24 effect the correction before filing the action.

51.25 **FOREIGN LIMITED LIABILITY COMPANIES**

51.26 Sec. 55. **[322C.0801] GOVERNING LAW.**

51.27 Subdivision 1. **Scope of foreign law.** The law of the state or other jurisdiction under  
 51.28 which a foreign limited liability company is formed governs:

51.29 (1) the internal affairs of the company; and

51.30 (2) the liability of a member as member, a manager as manager, and a governor as  
 51.31 governor for the debts, obligations, or other liabilities of the company.

51.32 Subd. 2. **Restriction on denial of certificate of authority.** A foreign limited liability  
 51.33 company may not be denied a certificate of authority by reason of any difference between  
 51.34 the law of the jurisdiction under which the company is formed and the law of this state.

52.1 Subd. 3. No increase in foreign company's powers. A certificate of authority does  
52.2 not authorize a foreign limited liability company to engage in any business or exercise any  
52.3 power that a limited liability company may not engage in or exercise in this state.

52.4 Sec. 56. **[322C.0802] APPLICATION FOR CERTIFICATE OF AUTHORITY.**

52.5 Before transacting business in this state, a foreign limited liability company shall  
52.6 obtain a certificate of authority to transact business in this state by filing an application  
52.7 with the secretary of state together with a total fee of \$185. The application must state:

52.8 (1) the name of the company and any alternate name adopted pursuant to section  
52.9 322C.0805, subdivision 1;

52.10 (2) the name of the state or other jurisdiction under whose law the company is formed;

52.11 (3) a statement that the foreign limited liability company has complied with the  
52.12 organizational laws in the jurisdiction under whose laws the company is formed;

52.13 (4) the street address of the company's principal office and, if the law of the  
52.14 jurisdiction under which the company is formed requires the company to maintain an  
52.15 office in that jurisdiction, the street address of the required office; and

52.16 (5) the name and street address of the company's initial registered office and agent  
52.17 for service of process in this state.

52.18 Sec. 57. **[322C.0803] TRANSACTIONS NOT CONSTITUTING TRANSACTING**  
52.19 **BUSINESS.**

52.20 Subdivision 1. Activities not constituting transacting business. A foreign limited  
52.21 liability company shall not be considered to be transacting business in this state for the  
52.22 purposes of this chapter solely by reason of carrying on in this state any one or more of  
52.23 the following, including:

52.24 (1) maintaining or defending any action or suit or any administrative or arbitration  
52.25 proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

52.26 (2) holding meetings of its managers, governors, or members or carrying on other  
52.27 activities concerning its internal affairs;

52.28 (3) maintaining bank accounts;

52.29 (4) maintaining offices or agencies for the transfer, exchange, and registration of  
52.30 its securities, or appointing and maintaining trustees or depositaries with relation to its  
52.31 securities;

52.32 (5) holding title to and managing real or personal property, or any interest therein,  
52.33 situated in this state, as executor of the will or administrator of the estate of any decedent,  
52.34 as trustee of any trust, or as guardian of any person or conservator of any person's estate;

53.1 (6) making, participating in, or investing in loans or creating, as borrower or lender,  
53.2 or otherwise acquiring indebtedness or mortgages or other security interests in real or  
53.3 personal property;

53.4 (7) securing or collecting its debts or enforcing any rights in property securing  
53.5 them; or

53.6 (8) conducting an isolated transaction completed within a period of 30 days and not  
53.7 in the course of a number of repeated transactions of like nature.

53.8 Subd. 2. **Property ownership.** For purposes of sections 322C.0801 to 322C.0809,  
53.9 the ownership in this state of income-producing real property or tangible personal  
53.10 property, other than property excluded under subdivision 1, constitutes transacting  
53.11 business in this state.

53.12 Subd. 3. **Limitations.** This section does not apply in determining the contacts  
53.13 or activities that may subject a foreign limited liability company to service of process,  
53.14 taxation, or regulation under law of this state other than this chapter.

53.15 **Sec. 58. [322C.0804] FILING OF CERTIFICATE OF AUTHORITY.**

53.16 Unless the secretary of state determines that an application for a certificate of  
53.17 authority does not comply with the filing requirements of this chapter, the secretary of  
53.18 state, upon payment of all filing fees, shall file the application of a foreign limited liability  
53.19 company; prepare, sign, and file a certificate of authority to transact business in this state;  
53.20 and send a copy of the filed certificate, together with a receipt for the fees, to the company  
53.21 or its representative.

53.22 **Sec. 59. [322C.0805] NONCOMPLYING NAME OF FOREIGN LIMITED**  
53.23 **LIABILITY COMPANY.**

53.24 Subdivision 1. **Noncomplying name.** A foreign limited liability company whose  
53.25 name does not comply with section 322C.0108 may not obtain a certificate of authority  
53.26 until it adopts, for the purpose of transacting business in this state, an alternate name  
53.27 that complies with section 322C.0108. A foreign limited liability company that adopts  
53.28 an alternate name under this subdivision and obtains a certificate of authority with the  
53.29 alternate name need not comply with section 333.01. After obtaining a certificate of  
53.30 authority with an alternate name, a foreign limited liability company shall transact business  
53.31 in this state under the alternate name unless the company is authorized under section  
53.32 333.01 to transact business in this state under another name. A foreign limited liability  
53.33 company may adopt an alternate name even if its name complies with section 322C.0108.

54.1 Subd. 2. **Change in name.** If a foreign limited liability company authorized to  
54.2 transact business in this state changes its name to one that does not comply with section  
54.3 322C.0108, it may not thereafter transact business in this state until it complies with  
54.4 subdivision 1 and obtains an amended certificate of authority.

54.5 **Sec. 60. [322C.0806] REVOCATION OF CERTIFICATE OF AUTHORITY.**

54.6 (a) The certificate of authority of a foreign limited liability company to transact  
54.7 business in this state shall be revoked by the secretary of state if it fails:

54.8 (1) to pay any fee due under the provisions of this chapter;

54.9 (2) to designate a registered agent when a vacancy occurs in that office, or when the  
54.10 appointed registered agent resigns or becomes disqualified or incapacitated;

54.11 (3) to file certificates of merger or name change, as required in section 322C.0805,  
54.12 subdivision 2; or

54.13 (4) to file an annual renewal.

54.14 (b) On finding that a default has occurred under paragraph (a), clauses (1) to (3), the  
54.15 secretary of state shall give notice by mail to the foreign limited liability company, at its  
54.16 registered office in this state, that the default exists and that its certificate of authority will  
54.17 be revoked unless the default shall be cured within 30 days after the mailing of the notice.

54.18 (c)(1) The secretary of state shall revoke the certificate of authority of a foreign  
54.19 limited liability company that is in default under paragraph (a), clause (4), for failure to  
54.20 file an annual renewal under section 5.34.

54.21 (2) The secretary of state shall revoke the certificate of authority of a foreign limited  
54.22 liability company that is in default under paragraph (a), clauses (1) to (3), if the default is  
54.23 not cured within 30 days after mailing the notice under paragraph (b); provided that for  
54.24 good cause shown the secretary of state may extend the 30-day period from time to time,  
54.25 but in no event may the aggregate of all extensions granted exceed 180 days or the period  
54.26 of time of any applicable extension granted by the Department of Revenue for filing the  
54.27 income tax return of the corporation, whichever is greater.

54.28 (d)(1) Upon revoking the certificate of authority of a foreign limited liability company  
54.29 because of a default under paragraph (a), clauses (1) to (3), the secretary of state shall:

54.30 (i) issue a certificate of revocation; and

54.31 (ii) mail to the foreign limited liability company, at its registered office in this state,  
54.32 a notice of the revocation.

54.33 (2) Upon revoking the certificate of authority of a foreign limited liability company  
54.34 because of a default under paragraph (a), clause (4), the secretary of state shall issue a

55.1 certificate of revocation, and the certificate must be filed in the Office of the Secretary of  
55.2 State. No further notice to the foreign limited liability company is required.

55.3 (3) The secretary of state shall also make the names of the revoked foreign limited  
55.4 liability companies available in an electronic format.

55.5 (e) Upon the issuance of such certificate of revocation, the authority of the foreign  
55.6 limited liability company to transact business in this state shall cease.

55.7 Sec. 61. **[322C.0807] WITHDRAWAL OF FOREIGN LIMITED LIABILITY**  
55.8 **COMPANY.**

55.9 (a) If a foreign limited liability company holding a certificate of authority desires to  
55.10 withdraw, it shall file with the secretary of state an application for withdrawal.

55.11 (b) The application for withdrawal shall set forth:

55.12 (1) the name of the foreign limited liability company corporation and the state or  
55.13 country under the laws of which it is organized;

55.14 (2) that it has no property located in this state and has ceased to transact business  
55.15 therein;

55.16 (3) that its governing body has duly determined to surrender its authority to transact  
55.17 business in this state;

55.18 (4) that it revokes the authority of its registered agent in this state to accept service  
55.19 of process;

55.20 (5) the address to which the secretary of state shall mail a copy of any process against  
55.21 the foreign limited liability company that may be served upon the secretary of state;

55.22 (6) that it will pay to the commissioner of management and budget the amount of  
55.23 any additional license fees properly found by the secretary of state to be then due from  
55.24 such foreign limited liability company; and

55.25 (7) additional information required or demanded to enable the secretary of state  
55.26 to determine the additional license fees, if any, payable by the foreign limited liability  
55.27 company.

55.28 (c) The application for withdrawal shall be executed on behalf of the foreign limited  
55.29 liability company pursuant to section 322C.0203.

55.30 (d) The application for withdrawal shall be delivered to the secretary of state. Upon  
55.31 receiving and examining the same, and upon finding that it conforms to the provisions of  
55.32 this chapter, the secretary of state shall, when all license fees, filing fees, and other charges  
55.33 have been paid as required by law, file the same and shall issue and record a certificate  
55.34 of withdrawal. Upon the issuance of the certificate, the authority of the foreign limited  
55.35 liability company to transact business in this state shall cease.

56.1 (e) The filing with the secretary of state by the corporation of a certificate of  
56.2 dissolution, or a certificate of merger if the foreign limited liability company is not the  
56.3 surviving limited liability company from the proper officer of the state or country under  
56.4 the laws of which the foreign limited liability company is organized, constitutes a valid  
56.5 application of withdrawal and the authority of the foreign limited liability company to  
56.6 transact business in this state shall cease upon filing of the certificate.

56.7 Sec. 62. **[322C.0808] EFFECT OF FAILURE TO HAVE CERTIFICATE OF**  
56.8 **AUTHORITY.**

56.9 Subdivision 1. **Certificate of authority required.** A foreign limited liability  
56.10 company transacting business in this state may not maintain an action or proceeding in  
56.11 this state unless it has a certificate of authority to transact business in this state.

56.12 Subd. 2. **Actions not affected.** The failure of a foreign limited liability company  
56.13 to have a certificate of authority to transact business in this state does not impair the  
56.14 validity of a contract or act of the company or prevent the company from defending an  
56.15 action or proceeding in this state.

56.16 Subd. 3. **Limitation on liability.** A member, manager, or governor of a foreign  
56.17 limited liability company is not liable for the debts, obligations, or other liabilities of the  
56.18 company solely because the company transacted business in this state without a certificate  
56.19 of authority.

56.20 Subd. 4. **Secretary of state as agent.** If a foreign limited liability company  
56.21 transacts business in this state without a certificate of authority or cancels its certificate of  
56.22 authority, it appoints the secretary of state as its agent for service of process for rights of  
56.23 action arising out of the transaction of business in this state.

56.24 Sec. 63. **[322C.0809] ACTION BY ATTORNEY GENERAL.**

56.25 The attorney general may maintain an action to enjoin a foreign limited liability  
56.26 company from transacting business in this state in violation of sections 322C.0801 to  
56.27 322C.0809.

56.28 **ACTIONS BY MEMBERS**

56.29 Sec. 64. **[322C.0901] DIRECT ACTION BY MEMBER.**

56.30 Subdivision 1. **Direct actions allowed.** Subject to subdivision 2, a member may  
56.31 maintain a direct action against another member, a manager, a governor, or the limited  
56.32 liability company to enforce the member's rights and otherwise protect the member's



57.1 interests, including rights and interests under the operating agreement or this chapter or  
57.2 arising independently of the membership relationship.

57.3 Subd. 2. **Action requirements.** A member maintaining a direct action under this  
57.4 section must plead and prove an actual or threatened injury that is not solely the result of  
57.5 an injury suffered or threatened to be suffered by the limited liability company.

57.6 Sec. 65. **[322C.0902] DERIVATIVE ACTION.**

57.7 A member may maintain a derivative action to enforce a right of a limited liability  
57.8 company if:

57.9 (1) the member first makes a demand on the other members in a member-managed  
57.10 limited liability company, the managers of a manager-managed limited liability company,  
57.11 or the board of governors of a board-managed limited liability company requesting that  
57.12 they cause the company to bring an action to enforce the right, and the member or board  
57.13 does not bring the action within a reasonable time; or

57.14 (2) a demand under clause (1) would be futile.

57.15 Sec. 66. **[322C.0903] PROPER PLAINTIFF.**

57.16 Subdivision 1. **Member status required.** Except as otherwise provided in  
57.17 subdivision 2, a derivative action under section 322C.0902 may be maintained only by a  
57.18 person that is a member at the time the action is commenced and remains a member  
57.19 while the action continues.

57.20 Subd. 2. **Effect of plaintiff death.** If the sole plaintiff in a derivative action dies  
57.21 while the action is pending, the court may permit another member of the limited liability  
57.22 company to be substituted as plaintiff.

57.23 Sec. 67. **[322C.0904] PLEADING.**

57.24 In a derivative action under section 322C.0902, the complaint must state with  
57.25 particularity:

57.26 (1) the date and content of the plaintiff's demand and the response to the demand by  
57.27 the other members, managers, or board of governors; or

57.28 (2) if a demand has not been made, the reasons a demand under section 322C.0902,  
57.29 clause (1), would be futile.

57.30 Sec. 68. **[322C.0905] SPECIAL LITIGATION COMMITTEE.**

57.31 Subdivision 1. **Committee authorization.** If a limited liability company is named  
57.32 as or made a party in a derivative proceeding, the company may appoint a special

58.1 litigation committee to investigate the claims asserted in the proceeding and determine  
58.2 whether pursuing the action is in the best interests of the company. If the company  
58.3 appoints a special litigation committee, on motion by the committee made in the name  
58.4 of the company, except for good cause shown, the court shall stay discovery for the time  
58.5 reasonably necessary to permit the committee to make its investigation. This subdivision  
58.6 does not prevent the court from enforcing a person's right to information under section  
58.7 322C.0410 or, for good cause shown, granting extraordinary relief in the form of a  
58.8 temporary restraining order or preliminary injunction.

58.9 Subd. 2. **Committee composition.** A special litigation committee may be composed  
58.10 of one or more disinterested and independent individuals, who may be members.

58.11 Subd. 3. **Requirements for appointment of committee.** A special litigation  
58.12 committee may be appointed:

58.13 (1) in a member-managed limited liability company:

58.14 (i) by the consent of a majority of the members not named as defendants or plaintiffs  
58.15 in the proceeding; and

58.16 (ii) if all members are named as defendants or plaintiffs in the proceeding, by a  
58.17 majority of the members named as defendants;

58.18 (2) in a manager-managed limited liability company:

58.19 (i) by a majority of the managers not named as defendants or plaintiffs in the  
58.20 proceeding; and

58.21 (ii) if all managers are named as defendants or plaintiffs in the proceeding, by a  
58.22 majority of the managers named as defendants; and

58.23 (3) in a board-managed limited liability company:

58.24 (i) by a majority of governors not named as defendants or plaintiffs in the  
58.25 proceeding; and

58.26 (ii) if all governors are named as defendants or plaintiffs in the proceeding, by a  
58.27 majority of the governors named as defendants.

58.28 Subd. 4. **Determinations of committee.** After appropriate investigation, a special  
58.29 litigation committee may determine that it is in the best interests of the limited liability  
58.30 company that the proceeding:

58.31 (1) continue under the control of the plaintiff;

58.32 (2) continue under the control of the committee;

58.33 (3) be settled on terms approved by the committee; or

58.34 (4) be dismissed.

58.35 Subd. 5. **Committee procedures.** After making a determination under subdivision  
58.36 4, a special litigation committee shall file with the court a statement of its determination

59.1 and its report supporting its determination, giving notice to the plaintiff. The court shall  
59.2 determine whether the members of the committee were disinterested and independent  
59.3 and whether the committee conducted its investigation and made its recommendation  
59.4 in good faith, independently, and with reasonable care, with the committee having the  
59.5 burden of proof. If the court finds that the members of the committee were disinterested  
59.6 and independent and that the committee acted in good faith, independently, and with  
59.7 reasonable care, the court shall enforce the determination of the committee. Otherwise,  
59.8 the court shall dissolve the stay of discovery entered under subdivision 1 and allow the  
59.9 action to proceed under the direction of the plaintiff.

59.10 Sec. 69. **[322C.0906] PROCEEDS AND EXPENSES.**

59.11 Subdivision 1. **Ownership of proceeds.** Except as otherwise provided in  
59.12 subdivision 2:

59.13 (1) any proceeds or other benefits of a derivative action under section 322C.0902,  
59.14 whether by judgment, compromise, or settlement, belong to the limited liability company  
59.15 and not to the plaintiff; and

59.16 (2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately  
59.17 to the company.

59.18 Subd. 2. **Expenses awarded.** If a derivative action under section 322C.0902 is  
59.19 successful in whole or in part, the court may award the plaintiff reasonable expenses,  
59.20 including reasonable attorney fees and costs, from the recovery of the limited liability  
59.21 company.

59.22 **MERGER, CONVERSION, AND DOMESTICATION**

59.23 Sec. 70. **[322C.1001] DEFINITIONS.**

59.24 Subdivision 1. **Scope.** For the purposes of sections 322C.1001 to 322C.1015, the  
59.25 terms defined in this section have the meanings given them.

59.26 Subd. 2. **Constituent limited liability company.** "Constituent limited liability  
59.27 company" means a constituent organization that is a limited liability company.

59.28 Subd. 3. **Constituent organization.** "Constituent organization" means an  
59.29 organization that is party to a merger or exchange.

59.30 Subd. 4. **Converted organization.** "Converted organization" means the  
59.31 organization into which a converting organization converts pursuant to sections 322C.1007  
59.32 to 322C.1010.

59.33 Subd. 5. **Converting limited liability company.** "Converting limited liability  
59.34 company" means a converting organization that is a limited liability company.

60.1 Subd. 6. **Converting organization.** "Converting organization" means an  
60.2 organization that converts into another organization pursuant to section 322C.1007.

60.3 Subd. 7. **Domesticated company.** "Domesticated company" means the company  
60.4 that exists after a domesticating foreign limited liability company or limited liability  
60.5 company effects a domestication pursuant to sections 322C.1011 to 322C.1014.

60.6 Subd. 8. **Domesticating company.** "Domesticating company" means the company  
60.7 that effects a domestication pursuant to sections 322C.1011 to 322C.1014.

60.8 Subd. 9. **Governing statute.** "Governing statute" means the statute that governs  
60.9 an organization's internal affairs.

60.10 Subd. 10. **Organization.** "Organization" means a general partnership, including  
60.11 a limited liability partnership, limited partnership, including a limited liability limited  
60.12 partnership, limited liability company, business trust, corporation, or any other person  
60.13 having a governing statute. The term includes a domestic or foreign organization  
60.14 regardless of whether organized for profit.

60.15 Subd. 11. **Organizational documents.** "Organizational documents" means:

60.16 (1) for a domestic or foreign general partnership, its partnership agreement;

60.17 (2) for a limited partnership or foreign limited partnership, its certificate of limited  
60.18 partnership and partnership agreement;

60.19 (3) for a domestic or foreign limited liability company, its certificate or articles of  
60.20 organization and operating agreement, or comparable records as provided in its governing  
60.21 statute;

60.22 (4) for a business trust, its agreement of trust and declaration of trust;

60.23 (5) for a domestic or foreign corporation for profit, its articles of incorporation,  
60.24 bylaws, and other agreements among its shareholders which are authorized by its  
60.25 governing statute, or comparable records as provided in its governing statute; and

60.26 (6) for any other organization, the basic records that create the organization and  
60.27 determine its internal governance and the relations among the persons that own it, have an  
60.28 interest in it, or are members of it.

60.29 Subd. 12. **Personal liability.** "Personal liability" means liability for a debt,  
60.30 obligation, or other liability of an organization which is imposed on a person that co-owns,  
60.31 has an interest in, or is a member of the organization:

60.32 (1) by the governing statute solely by reason of the person co-owning, having an  
60.33 interest in, or being a member of the organization; or

60.34 (2) by the organization's organizational documents under a provision of the governing  
60.35 statute authorizing those documents to make one or more specified persons liable for all or

61.1 specified debts, obligations, or other liabilities of the organization solely by reason of the  
61.2 person or persons co-owning, having an interest in, or being a member of the organization.

61.3 Subd. 13. **Surviving organization.** "Surviving organization" means an organization  
61.4 into which one or more other organizations are merged whether the organization preexisted  
61.5 the merger or was created by the merger.

61.6 Sec. 71. **322C.1002] MERGER; EXCHANGE.**

61.7 Subdivision 1. **Prerequisites for merger.** A limited liability company may merge  
61.8 with one or more other constituent organizations pursuant to this section, sections  
61.9 322C.1003 to 322C.1005, and a plan of merger if:

61.10 (1) the governing statute of each of the other organizations authorizes the merger;

61.11 (2) the merger is not prohibited by the law of a jurisdiction that enacted any of the  
61.12 governing statutes; and

61.13 (3) each of the other organizations complies with its governing statute in effecting  
61.14 the merger.

61.15 Subd. 2. **Prerequisites for exchange.** A limited liability company may engage in  
61.16 an exchange with one or more other constituent organizations pursuant to this section by  
61.17 which one of the constituent organizations acquires all of the ownership interests of one or  
61.18 more classes or series of another constituent organization pursuant to this section, sections  
61.19 322C.1003 to 322C.1005, and a plan of exchange if:

61.20 (1) the governing statute of each of the other constituent organizations authorizes  
61.21 the exchange;

61.22 (2) the exchange is not prohibited by the law of a jurisdiction that enacted any of the  
61.23 governing statutes; and

61.24 (3) each of the other constituent organizations complies with its governing statute in  
61.25 effecting the exchange.

61.26 Subd. 3. **Plan of merger or exchange.** A plan of merger or exchange must be in a  
61.27 record and must include:

61.28 (1) the name and form of each constituent organization and:

61.29 (i) in the case of a merger, the name and form of the surviving organization and, if  
61.30 the surviving organization is to be created by the merger, a statement to that effect; and

61.31 (ii) in the case of an exchange, the name of the acquiring organization;

61.32 (2)(i) in the case of a merger, the terms and conditions of the merger, including the  
61.33 manner and basis for converting the interests in each constituent organization into any

61.34 combination of money, interests in the surviving organization, and other consideration; and

62.1 (ii) in the case of an exchange, the terms and conditions of the exchange, including  
 62.2 the manner and basis of exchanging the ownership interests to be acquired for securities  
 62.3 of, or other ownership interests in, the acquiring organization or any other organization or,  
 62.4 in whole or part, for money or other property;

62.5 (3) in the case of a merger, if the surviving organization is to be created by the merger,  
 62.6 the surviving organization's organizational documents that are proposed to be in a record;

62.7 (4) in the case of a merger, if the surviving organization is not to be created by  
 62.8 the merger, any amendments to be made by the merger to the surviving organization's  
 62.9 organizational documents that are, or are proposed to be, in a record; and

62.10 (5) any other provisions with respect to the proposed merger or exchange that are  
 62.11 considered necessary or desirable.

62.12 Sec. 72. **[322C.1003] ACTION ON PLAN OF MERGER OR EXCHANGE BY**  
 62.13 **CONSTITUENT LIMITED LIABILITY COMPANY.**

62.14 Subdivision 1. **Member consent required.** Subject to section 322C.1015, a plan  
 62.15 of merger or exchange must be consented to by all the members of a constituent limited  
 62.16 liability company.

62.17 Subd. 2. **Amendment of plan or abandonment of merger or exchange.** Subject to  
 62.18 section 322C.1015 and any contractual rights, after a merger or exchange is approved, and  
 62.19 at any time before the merger or exchange becomes effective according to this chapter,  
 62.20 a constituent limited liability company may amend the plan or abandon the merger or  
 62.21 exchange:

62.22 (1) as provided in the plan; or

62.23 (2) except as otherwise prohibited in the plan, with the same consent as was required  
 62.24 to approve the plan.

62.25 Sec. 73. **[322C.1004] FILINGS REQUIRED FOR MERGER OR EXCHANGE;**  
 62.26 **EFFECTIVE DATE AND TIME.**

62.27 Subdivision 1. **Articles of merger or exchange.** After each constituent organization  
 62.28 has approved a merger or exchange, articles of merger or exchange must be signed on  
 62.29 behalf of:

62.30 (1) each constituent limited liability company, as provided in section 322C.0203,  
 62.31 subdivision 1; and

62.32 (2) each other constituent organization, as provided in its governing statute.

62.33 Subd. 2. **Contents of articles of merger.** Articles of merger under this section  
 62.34 must include:

- 63.1 (1) the name and form of each constituent organization and the jurisdiction of its  
63.2 governing statute;
- 63.3 (2) the name and form of the surviving organization, the jurisdiction of its governing  
63.4 statute, and, if the surviving organization is created by the merger, a statement to that effect;
- 63.5 (3) the date the merger is effective under the governing statute of the surviving  
63.6 organization;
- 63.7 (4) if the surviving organization is to be created by the merger:
- 63.8 (i) if it will be a limited liability company, the company's articles of organization; or  
63.9 (ii) if it will be an organization other than a limited liability company, the  
63.10 organizational document that creates the organization that is in a public record;
- 63.11 (5) if the surviving organization preexists the merger, any amendments provided  
63.12 for in the plan of merger for the organizational document that created the organization  
63.13 that are in a public record;
- 63.14 (6) a statement as to each constituent organization that the merger was approved as  
63.15 required by the organization's governing statute;
- 63.16 (7) if the surviving organization is a foreign organization not authorized to transact  
63.17 business in this state, the street address of an office that the secretary of state may use for  
63.18 the purposes of section 322C.1005, subdivision 2; and
- 63.19 (8) any additional information required by the governing statute of any constituent  
63.20 organization.
- 63.21 **Subd. 3. Contents of articles of exchange. Articles of exchange under this section**  
63.22 **must include:**
- 63.23 (1) the name and form of each constituent organization and the jurisdiction of its  
63.24 governing statute;
- 63.25 (2) the manner and basis of exchanging the ownership interests to be acquired for  
63.26 securities of, or other ownership interests in, the acquiring organization or any other  
63.27 organization or, in whole or part, for money or other property;
- 63.28 (3) the date the exchange is effective under the governing statute of the acquiring  
63.29 organization;
- 63.30 (4) a statement as to each constituent organization that the exchange was approved  
63.31 as required by the organization's governing statute; and
- 63.32 (5) any additional information required by the governing statute of any constituent  
63.33 organization.
- 63.34 **Subd. 4. Delivery of articles of merger or exchange. Each constituent limited**  
63.35 **liability company shall file the articles of merger, together with a total fee of \$60, with the**  
63.36 **Office of the Secretary of State.**

64.1 Subd. 5. **Effective date and time of merger or exchange.** (a) A merger becomes  
 64.2 effective under sections 322C.1001 to 322C.1015:

64.3 (1) if the surviving organization is a limited liability company, upon the later of:

64.4 (i) compliance with subdivision 4; or

64.5 (ii) subject to section 322C.0205, subdivision 3, such effective time as is specified in  
 64.6 the articles of merger; or

64.7 (2) if the surviving organization is not a limited liability company, as provided by  
 64.8 the governing statute of the surviving organization.

64.9 (b) An exchange becomes effective under sections 322C.1001 to 322C.1015 upon  
 64.10 the later of:

64.11 (1) compliance with subdivision 4; or

64.12 (2) subject to section 322C.0205, subdivision 3, such effective time as is specified in  
 64.13 the articles of exchange.

64.14 **Sec. 74. [322C.1005] EFFECT OF MERGER.**

64.15 Subdivision 1. **Effect on constituent organizations.** When a merger becomes  
 64.16 effective:

64.17 (1) the surviving organization continues or comes into existence;

64.18 (2) each constituent organization that merges into the surviving organization ceases  
 64.19 to exist as a separate entity;

64.20 (3) all property owned by each constituent organization that ceases to exist vests in  
 64.21 the surviving organization;

64.22 (4) all debts, obligations, or other liabilities of each constituent organization  
 64.23 that ceases to exist continue as debts, obligations, or other liabilities of the surviving  
 64.24 organization;

64.25 (5) an action or proceeding pending by or against any constituent organization that  
 64.26 ceases to exist may be continued as if the merger had not occurred;

64.27 (6) except as prohibited by other law, all of the rights, privileges, immunities,  
 64.28 powers, and purposes of each constituent organization that ceases to exist vest in the  
 64.29 surviving organization;

64.30 (7) except as otherwise provided in the plan of merger, the terms and conditions  
 64.31 of the plan of merger take effect;

64.32 (8) except as otherwise agreed, if a constituent limited liability company ceases  
 64.33 to exist, the merger does not dissolve the limited liability company for the purposes of  
 64.34 sections 322C.0701 to 322C.0707;

64.35 (9) if the surviving organization is created by the merger:



65.1 (i) if it is a limited liability company, the articles of organization become effective; or  
65.2 (ii) if it is an organization other than a limited liability company, the organizational  
65.3 document that creates the organization becomes effective; and  
65.4 (10) if the surviving organization preexisted the merger, any amendments provided  
65.5 for in the articles of merger or the organizational document that created the organization  
65.6 become effective.

65.7 Subd. 2. **Foreign organization.** A surviving organization that is a foreign  
65.8 organization consents to the jurisdiction of the courts of this state to enforce any debt,  
65.9 obligation, or other liability owed by a constituent organization if before the merger the  
65.10 constituent organization was subject to suit in this state on the debt, obligation, or other  
65.11 liability. A surviving organization that is a foreign organization and not authorized  
65.12 to transact business in this state appoints the secretary of state as its agent for service  
65.13 of process for the purposes of enforcing a debt, obligation, or other liability under this  
65.14 subdivision. Service on the secretary of state under this subdivision must be made in the  
65.15 same manner and has the same consequences as in section 322C.0116, subdivisions 3 and 4.

65.16 Sec. 75. **[322C.1006] EFFECT OF EXCHANGE.**

65.17 When an exchange becomes effective, the membership interests in a limited liability  
65.18 company to be exchanged under the terms of the plan are considered to be exchanged.  
65.19 The members owning those membership interests are entitled only to the ownership  
65.20 interests, securities, money, or other property into which those membership interests have  
65.21 been converted or for which those membership interests have been exchanged according  
65.22 to the plan.

65.23 Sec. 76. **[322C.1007] CONVERSION.**

65.24 Subdivision 1. **Conversion requirements.** An organization other than a limited  
65.25 liability company, a foreign limited liability company, a nonprofit corporation, or an  
65.26 organization owning assets irrevocably dedicated to a charitable purpose, may convert  
65.27 to a limited liability company other than a nonprofit limited liability company, and a  
65.28 limited liability company other than a nonprofit limited liability company may convert to  
65.29 an organization other than a foreign limited liability company pursuant to this section,  
65.30 sections 322C.1008 to 322C.1010, and a plan of conversion if:

65.31 (1) the other organization's governing statute authorizes the conversion;  
65.32 (2) the conversion is not prohibited by the law of the jurisdiction that enacted the  
65.33 other organization's governing statute or other law of this state; and

66.1 (3) the other organization complies with its governing statute in effecting the  
66.2 conversion.

66.3 Subd. 2. **Contents of plan of conversion.** A plan of conversion must be in a record  
66.4 and must include:

66.5 (1) the name and form of the organization before conversion;

66.6 (2) the name and form of the organization after conversion;

66.7 (3) the terms and conditions of the conversion, including the manner and basis  
66.8 for converting interests in the converting organization into any combination of money,  
66.9 interests in the converted organization, and other consideration; and

66.10 (4) the organizational documents of the converted organization that are, or are  
66.11 proposed to be, in a record.

66.12 Sec. 77. **[322C.1008] ACTION ON PLAN OF CONVERSION BY CONVERTING**  
66.13 **LIMITED LIABILITY COMPANY.**

66.14 Subdivision 1. **Member consent required.** Subject to section 322C.1015, a plan  
66.15 of conversion must be consented to by all the members of a converting limited liability  
66.16 company.

66.17 Subd. 2. **Amendment of plan or abandonment of conversion.** Subject to section  
66.18 322C.1015 and any contractual rights, after a conversion is approved, and at any time  
66.19 before articles of conversion are delivered to the secretary of state for filing under section  
66.20 322C.1009, a converting limited liability company may amend the plan or abandon the  
66.21 conversion:

66.22 (1) as provided in the plan; or

66.23 (2) except as otherwise prohibited in the plan, by the same consent as was required  
66.24 to approve the plan.

66.25 Sec. 78. **[322C.1009] FILINGS REQUIRED FOR CONVERSION; EFFECTIVE**  
66.26 **DATE AND TIME.**

66.27 Subdivision 1. **Articles of conversion.** After a plan of conversion is approved:

66.28 (1) a converting limited liability company shall file articles of conversion with the  
66.29 secretary of state, together with a total fee of \$60, which articles of conversion must be  
66.30 signed as provided in section 322C.0203, subdivision 1, and must include:

66.31 (i) a statement that the limited liability company has been converted into another  
66.32 organization;

66.33 (ii) the name and form of the organization and the jurisdiction of its governing statute;

67.1 (iii) the time the conversion is effective under the governing statute of the converted  
 67.2 organization;

67.3 (iv) a statement that the conversion was approved as required by this chapter;

67.4 (v) a statement that the conversion was approved as required by the governing  
 67.5 statute of the converted organization; and

67.6 (vi) if the converted organization is a foreign organization not authorized to transact  
 67.7 business in this state, the street address of an office that the secretary of state may use for  
 67.8 the purposes of section 322C.1010, subdivision 3; and

67.9 (2) if the converting organization is not a converting limited liability company, the  
 67.10 converting organization shall file with the secretary of state articles of organization, which  
 67.11 must include, in addition to the information required by section 322C.0201, subdivision 2:

67.12 (i) a statement that the converted organization was converted from another  
 67.13 organization;

67.14 (ii) the name and form of that converting organization and the jurisdiction of its  
 67.15 governing statute; and

67.16 (iii) a statement that the conversion was approved in a manner that complied with  
 67.17 the converting organization's governing statute.

67.18 **Subd. 2. Effective date and time of conversion. A conversion becomes effective:**

67.19 (1) if the converted organization is a limited liability company, when the articles  
 67.20 of organization takes effect; and

67.21 (2) if the converted organization is not a limited liability company, as provided by  
 67.22 the governing statute of the converted organization.

67.23 **Sec. 79. [322C.1010] EFFECT OF CONVERSION.**

67.24 **Subdivision 1. Same entity. An organization that has been converted pursuant to**  
 67.25 **sections 322C.1007 to 322C.1009 is for all purposes the same entity that existed before**  
 67.26 **the conversion.**

67.27 **Subd. 2. Effect on converting organization. When a conversion takes effect:**

67.28 (1) all property owned by the converting organization remains vested in the  
 67.29 converted organization;

67.30 (2) all debts, obligations, or other liabilities of the converting organization continue  
 67.31 as debts, obligations, or other liabilities of the converted organization;

67.32 (3) an action or proceeding pending by or against the converting organization may  
 67.33 be continued as if the conversion had not occurred;

68.1 (4) except as prohibited by law other than this chapter, all of the rights, privileges,  
 68.2 immunities, powers, and purposes of the converting organization remain vested in the  
 68.3 converted organization;

68.4 (5) except as otherwise provided in the plan of conversion, the terms and conditions  
 68.5 of the plan of conversion take effect; and

68.6 (6) except as otherwise agreed, the conversion does not dissolve a converting limited  
 68.7 liability company for the purposes of sections 322C.0701 to 322C.0707.

68.8 Subd. 3. **Foreign organization.** A converted organization that is a foreign  
 68.9 organization consents to the jurisdiction of the courts of this state to enforce any debt,  
 68.10 obligation, or other liability for which the converting limited liability company is liable  
 68.11 if, before the conversion, the converting limited liability company was subject to suit in  
 68.12 this state on the debt, obligation, or other liability. A converted organization that is a  
 68.13 foreign organization and not authorized to transact business in this state appoints the  
 68.14 secretary of state as its agent for service of process for purposes of enforcing a debt,  
 68.15 obligation, or other liability under this subdivision. Service on the secretary of state under  
 68.16 this subdivision must be made in the same manner and has the same consequences as in  
 68.17 section 322C.0116, subdivisions 3 and 4.

68.18 Sec. 80. **[322C.1011] DOMESTICATION.**

68.19 Subdivision 1. **Foreign limited liability company.** A foreign limited liability  
 68.20 company may become a limited liability company pursuant to this section, sections  
 68.21 322C.1011 to 322C.1013, and a plan of domestication if:

68.22 (1) the foreign limited liability company's governing statute authorizes the  
 68.23 domestication;

68.24 (2) the domestication is not prohibited by the law of the jurisdiction that enacted  
 68.25 the governing statute; and

68.26 (3) the foreign limited liability company complies with its governing statute in  
 68.27 effecting the domestication.

68.28 Subd. 2. **Domestic limited liability company.** A limited liability company may  
 68.29 become a foreign limited liability company pursuant to this section, sections 322C.1011 to  
 68.30 322C.1013, and a plan of domestication if:

68.31 (1) the foreign limited liability company's governing statute authorizes the  
 68.32 domestication;

68.33 (2) the domestication is not prohibited by the law of the jurisdiction that enacted  
 68.34 the governing statute; and

69.1 (3) the foreign limited liability company complies with its governing statute in  
 69.2 effecting the domestication.

69.3 Subd. 3. **Plan of domestication.** A plan of domestication must be in a record  
 69.4 and must include:

69.5 (1) the name of the domesticating company before domestication and the jurisdiction  
 69.6 of its governing statute;

69.7 (2) the name of the domesticated company after domestication and the jurisdiction  
 69.8 of its governing statute;

69.9 (3) the terms and conditions of the domestication, including the manner and basis  
 69.10 for converting interests in the domesticating company into any combination of money,  
 69.11 interests in the domesticated company, and other consideration; and

69.12 (4) the organizational documents of the domesticated company that are, or are  
 69.13 proposed to be, in a record.

69.14 Sec. 81. **[322C.1012] ACTION ON PLAN OF DOMESTICATION BY**  
 69.15 **DOMESTICATING LIMITED LIABILITY COMPANY.**

69.16 Subdivision 1. **Consent required.** A plan of domestication must be consented to:

69.17 (1) by all the members, subject to section 322C.1015, if the domesticating company  
 69.18 is a limited liability company; and

69.19 (2) as provided in the domesticating company's governing statute, if the company is  
 69.20 a foreign limited liability company.

69.21 Subd. 2. **Amendment of plan or abandonment of domestication.** Subject to any  
 69.22 contractual rights, after a domestication is approved, and at any time before articles of  
 69.23 domestication are filed with the secretary of state under section 322C.1013, a domesticating  
 69.24 limited liability company may amend the plan or abandon the domestication:

69.25 (1) as provided in the plan; or

69.26 (2) except as otherwise prohibited in the plan, by the same consent as was required  
 69.27 to approve the plan.

69.28 Sec. 82. **[322C.1013] FILINGS REQUIRED FOR DOMESTICATION;**  
 69.29 **EFFECTIVE DATE.**

69.30 Subdivision 1. **Articles of domestication.** After a plan of domestication is approved,  
 69.31 a domesticating company shall file with the secretary of state articles of domestication,  
 69.32 together with a total fee of \$60, which articles of domestication must include:

69.33 (1) a statement, as the case may be, that the company has been domesticated from or  
 69.34 into another jurisdiction;

70.1 (2) the name of the domesticating company and the jurisdiction of its governing  
 70.2 statute;

70.3 (3) the name of the domesticated company and the jurisdiction of its governing statute;

70.4 (4) the date the domestication is effective under the governing statute of the  
 70.5 domesticated company;

70.6 (5) if the domesticating company was a limited liability company, a statement that  
 70.7 the domestication was approved as required by this chapter;

70.8 (6) if the domesticating company was a foreign limited liability company, a  
 70.9 statement that the domestication was approved as required by the governing statute of  
 70.10 the other jurisdiction; and

70.11 (7) if the domesticated company was a foreign limited liability company not  
 70.12 authorized to transact business in this state, the street address of an office that the secretary  
 70.13 of state may use for the purposes of section 322C.1014, subdivision 2.

70.14 Subd. 2. **Effective date of domestication.** A domestication becomes effective:

70.15 (1) when the articles of organization takes effect, if the domesticated company is  
 70.16 a limited liability company; and

70.17 (2) according to the governing statute of the domesticated company, if the  
 70.18 domesticated organization is a foreign limited liability company.

70.19 **Sec. 83. [322C.1014] EFFECT OF DOMESTICATION.**

70.20 Subdivision 1. **Effect on domesticating company.** When a domestication takes  
 70.21 effect:

70.22 (1) the domesticated company is for all purposes the company that existed before  
 70.23 the domestication;

70.24 (2) all property owned by the domesticating company remains vested in the  
 70.25 domesticated company;

70.26 (3) all debts, obligations, or other liabilities of the domesticating company continue  
 70.27 as debts, obligations, or other liabilities of the domesticated company;

70.28 (4) an action or proceeding pending by or against a domesticating company may be  
 70.29 continued as if the domestication had not occurred;

70.30 (5) except as prohibited by other law, all of the rights, privileges, immunities, powers,  
 70.31 and purposes of the domesticating company remain vested in the domesticated company;

70.32 (6) except as otherwise provided in the plan of domestication, the terms and  
 70.33 conditions of the plan of domestication take effect; and

70.34 (7) except as otherwise agreed, the domestication does not dissolve a domesticating  
 70.35 limited liability company for the purposes of sections 322C.0701 to 322C.0707.

71.1 Subd. 2. **Foreign company.** A domesticated company that is a foreign limited  
 71.2 liability company consents to the jurisdiction of the courts of this state to enforce any  
 71.3 debt, obligation, or other liability owed by the domesticating company if, before the  
 71.4 domestication, the domesticating company was subject to suit in this state on the debt,  
 71.5 obligation, or other liability. A domesticated company that is a foreign limited liability  
 71.6 company and not authorized to transact business in this state appoints the secretary of state  
 71.7 as its agent for service of process for purposes of enforcing a debt, obligation, or other  
 71.8 liability under this subdivision. Service on the secretary of state under this subdivision  
 71.9 must be made in the same manner and has the same consequences as in section 322C.0116,  
 71.10 subdivisions 3 and 4.

71.11 Subd. 3. **Foreign jurisdiction.** If a limited liability company has adopted and  
 71.12 approved a plan of domestication under section 322C.1011 providing for the company to  
 71.13 be domesticated in a foreign jurisdiction, a statement surrendering the company's articles  
 71.14 of organization must be filed with the secretary of state setting forth:

- 71.15 (1) the name of the company;  
 71.16 (2) a statement that the articles of organization is being surrendered in connection  
 71.17 with the domestication of the company in a foreign jurisdiction;  
 71.18 (3) a statement that the domestication was approved as required by this chapter; and  
 71.19 (4) the jurisdiction of formation of the domesticated foreign limited liability company.

71.20 **Sec. 84. [322C.1015] RESTRICTIONS ON APPROVAL OF MERGERS,**  
 71.21 **EXCHANGES, CONVERSIONS, AND DOMESTICATIONS.**

71.22 Subdivision 1. **Personality liability of member.** If a member of a constituent,  
 71.23 converting, or domesticating limited liability company will have personal liability with  
 71.24 respect to a surviving, constituent, converted, or domesticated organization, approval or  
 71.25 amendment of a plan of merger, exchange, conversion, or domestication is ineffective  
 71.26 without the consent of the member, unless:

- 71.27 (1) the company's operating agreement provides for approval of a merger, exchange,  
 71.28 conversion, or domestication with the consent of fewer than all the members; and  
 71.29 (2) the member has consented to the provision of the operating agreement.

71.30 Subd. 2. **Consent.** A member does not give the consent required by subdivision 1  
 71.31 merely by consenting to a provision of the operating agreement that permits the operating  
 71.32 agreement to be amended with the consent of fewer than all the members.

71.33 **Sec. 85. [322C.1101] NONPROFIT LIMITED LIABILITY COMPANIES.**

72.1 Subdivision 1. **Status as nonprofit limited liability company.** A limited liability  
 72.2 company is a nonprofit limited liability company if it is organized under or governed by  
 72.3 this chapter and its articles of organization state that it is a nonprofit limited liability  
 72.4 company governed by this section. The status of a nonprofit limited liability company  
 72.5 under this chapter is not determinative of its tax treatment.

72.6 Subd. 2. **Limitations on pecuniary gain and distributions to members.** A  
 72.7 nonprofit limited liability company may not:

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

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

72.14 Subd. 3. **Limitations on persons who may be members.** A natural person may not  
 72.15 be a member of, or own any transferable interest in, a nonprofit limited liability company.

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

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

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

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

72.24 Subd. 5. **Management; provisions of chapter 317A applicable to nonprofit**  
 72.25 **limited liability companies.** (a) A nonprofit limited liability company must be  
 72.26 board-managed. The business and affairs of a nonprofit limited liability company must be  
 72.27 managed by or under the direction of a board of governors, which will have such powers  
 72.28 as are usually exercised by the board of directors of a nonprofit corporation governed by  
 72.29 chapter 317A. All governors will be entitled to vote and have equal rights and preferences  
 72.30 except as otherwise provided in the articles of organization or operating agreement. The  
 72.31 members of the first board may be named in the articles of organization, designated, or  
 72.32 appointed pursuant to the articles of organization, or elected by the organizer.

72.33 (b) A nonprofit limited liability company must have one or more natural persons  
 72.34 acting as officers and exercising the functions of the offices of president and treasurer,  
 72.35 however designated. The officers have such powers as are usually exercised by similar  
 72.36 officers of a nonprofit corporation governed by chapter 317A. The board shall elect



73.1 or appoint officers, except to the extent that the articles of organization or operating  
 73.2 agreement provide that the members may elect or appoint officers.

73.3 (c) Section 317A.161, subdivision 11, applies to a nonprofit limited liability  
 73.4 company as if it were a nonprofit corporation governed by chapter 317A. Section  
 73.5 317A.251 applies to a governor of a nonprofit limited liability company as if the governor  
 73.6 were a director of a nonprofit corporation, and section 322C.409 does not apply.

73.7 (d) Section 317A.255 applies to, and with regard to, a governor of a nonprofit limited  
 73.8 liability company as if the governor were a director of a nonprofit corporation.

73.9 (e) Section 317A.257 applies to a person who serves without compensation as  
 73.10 a governor of a nonprofit limited liability company, manager, member, or agent of a  
 73.11 nonprofit limited liability company as if such person were serving without compensation  
 73.12 as a director, officer, member, or agent of a nonprofit corporation.

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

73.15 (g) Section 317A.735 regarding the distribution of assets on dissolution applies to  
 73.16 a nonprofit limited liability company as if it were a nonprofit corporation governed by  
 73.17 chapter 317A.

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

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

73.24 **MISCELLANEOUS PROVISIONS**

73.25 **Sec. 86. [322C.1201] UNIFORMITY OF APPLICATION AND**  
 73.26 **CONSTRUCTION.**

73.27 In applying and construing this uniform act, consideration must be given to the need  
 73.28 to promote uniformity of the law with respect to its subject matter among states that enact it.

73.29 **Sec. 87. [322C.1202] RELATION TO ELECTRONIC SIGNATURES IN**  
 73.30 **GLOBAL AND NATIONAL COMMERCE ACT.**

73.31 This chapter modifies, limits, and supersedes the federal Electronic Signatures in  
 73.32 Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but  
 73.33 does not modify, limit, or supersede section 101(c) of that act, United States Code, title 15,

74.1 section 7001(c), or authorize electronic delivery of any of the notices described in section  
74.2 103(b) of that act, United States Code, title 15, section 7003(b).

74.3 Sec. 88. **[322C.1203] SAVINGS CLAUSE.**

74.4 This chapter does not affect an action commenced, proceeding brought, or right  
74.5 accrued before this chapter takes effect.

74.6 Sec. 89. **[322C.1204] APPLICATION TO EXISTING RELATIONSHIPS.**

74.7 Subdivision 1. **Before effective date.** Before January 1, 2018, this chapter governs  
74.8 only:

74.9 (1) a limited liability company formed on or after August 1, 2015; and

74.10 (2) except as otherwise provided in subdivision 3, a limited liability company  
74.11 formed before August 1, 2015, which elects, in the manner provided in its operating  
74.12 agreement or by law for amending the operating agreement, to be subject to this chapter.

74.13 Subd. 2. **After effective date.** Except as otherwise provided in subdivision 3, on  
74.14 and after January 1, 2018, this chapter governs all limited liability companies.

74.15 Subd. 3. **Application to existing company.** For the purposes of applying this  
74.16 chapter to a limited liability company formed before August 1, 2015:

74.17 (1) the company's articles of organization are deemed to be the company's articles  
74.18 of organization; and

74.19 (2) for the purposes of applying section 322C.0102, subdivision 10, and subject  
74.20 to section 322C.0112, subdivision 4, language in the articles of organization, bylaws,  
74.21 operating agreement, and/or member control agreement of a limited liability company  
74.22 formed before August 1, 2015, that becomes subject to this chapter will operate as if  
74.23 that language were in the operating agreement of the limited liability company when it  
74.24 becomes subject to this chapter.

74.25 Sec. 90. **[322C.1205] STATE INTERESTED IN PROCEEDING.**

74.26 If it appears at any stage of a proceeding in a court in this state that the state is, or is  
74.27 likely to be, interested in the proceeding or that it is a matter of general public interest,  
74.28 the court shall order that a copy of the complaint or petition be served upon the attorney  
74.29 general in the same manner prescribed for serving a summons in a civil action. The  
74.30 attorney general shall intervene in a proceeding when the attorney general determines that  
74.31 the public interest requires it, whether or not the attorney general has been served.

74.32 Sec. 91. **REPEALER; EFFECTIVE DATE.**

75.1 Minnesota Statutes 2012, sections 322B.01; 322B.02; 322B.03, subdivisions 1, 2, 3,  
 75.2 6, 6a, 7, 8, 10, 11, 12, 13, 14, 15, 17, 17a, 17b, 18, 19, 19a, 20, 21, 22, 23, 24, 25, 26, 27,  
 75.3 28, 29, 30, 31, 31a, 32, 33, 34, 35, 36, 36a, 37, 38, 39, 40, 41, 41a, 42, 43, 44, 45, 45a,  
 75.4 46, 47, 48, 49, 50, and 51; 322B.04; 322B.10; 322B.105; 322B.11; 322B.115; 322B.12,  
 75.5 subdivisions 1, 2, 3, 4, and 5; 322B.125; 322B.13; 322B.135; 322B.14; 322B.145;  
 75.6 322B.15; 322B.155; 322B.16; 322B.165; 322B.17; 322B.175; 322B.18; 322B.20;  
 75.7 322B.21; 322B.22; 322B.23; 322B.30; 322B.303; 322B.306; 322B.31; 322B.313;  
 75.8 322B.316; 322B.32; 322B.323; 322B.326; 322B.33; 322B.333; 322B.336; 322B.34;  
 75.9 322B.343; 322B.346; 322B.348; 322B.35; 322B.353; 322B.356; 322B.36; 322B.363,  
 75.10 subdivisions 1, 2, 3, 4, 5, 6, and 7; 322B.366, subdivision 1; 322B.37; 322B.373;  
 75.11 322B.376; 322B.38; 322B.383; 322B.386; 322B.40; 322B.41; 322B.42; 322B.43;  
 75.12 322B.50; 322B.51; 322B.52; 322B.53; 322B.54; 322B.55; 322B.56; 322B.60; 322B.603;  
 75.13 322B.606; 322B.61; 322B.613; 322B.616; 322B.62; 322B.623; 322B.626; 322B.63;  
 75.14 322B.633; 322B.636; 322B.64; 322B.643; 322B.646; 322B.65; 322B.653; 322B.656;  
 75.15 322B.66; 322B.663; 322B.666; 322B.67; 322B.673; 322B.676; 322B.679; 322B.68;  
 75.16 322B.683; 322B.686; 322B.689; 322B.69; 322B.693; 322B.696; 322B.699; 322B.70;  
 75.17 322B.71; 322B.72; 322B.73; 322B.74; 322B.75; 322B.755; 322B.76; 322B.77; 322B.78;  
 75.18 322B.80; 322B.803; 322B.806; 322B.81; 322B.813; 322B.816, subdivisions 1, 2, 4, 5, and  
 75.19 6; 322B.82; 322B.823; 322B.826; 322B.83; 322B.833; 322B.836; 322B.84; 322B.843;  
 75.20 322B.846; 322B.85; 322B.853; 322B.856; 322B.86; 322B.863; 322B.866; 322B.87;  
 75.21 322B.873, subdivisions 1 and 4; 322B.876, subdivision 1; 322B.88; 322B.883; 322B.90;  
 75.22 322B.905; 322B.91, subdivisions 1 and 2; 322B.915; 322B.92; 322B.925; 322B.93;  
 75.23 322B.935; 322B.94; 322B.945; 322B.95; 322B.955; 322B.960, subdivisions 1, 4, and  
 75.24 5; and 322B.975, are repealed effective January 1, 2018.

75.25 Sec. 92. **EFFECTIVE DATE.**

75.26 Except as otherwise provided, this article is effective August 1, 2015.

## 75.27 **ARTICLE 2**

### 75.28 **CONFORMING CHANGES**

75.29 Section 1. Minnesota Statutes 2012, section 48A.03, subdivision 4, is amended to read:

75.30 Subd. 4. **Requirements for consolidated or merged companies.** When two or  
 75.31 more trust companies have been or are consolidated under sections 49.34 to 49.41, or, in  
 75.32 the case of a limited liability company, that has been or is merged under sections 322B.70  
 75.33 to 322B.75 or 322C.1001 to 322C.1005 and 322C.1015, the capital of the consolidated  
 75.34 or merged trust company is considered substituted for the capital of the several trust

76.1 companies entering into the consolidation or merger, and the aggregate of the securities  
 76.2 of these trust companies on deposit with the commissioner of management and budget,  
 76.3 according to this section, must be increased or diminished accordingly.

76.4 Sec. 2. Minnesota Statutes 2012, section 181.970, subdivision 2, is amended to read:

76.5 Subd. 2. **Exception.** Subdivision 1 does not apply to:

76.6 (1) employees of the state or a municipality governed by section 3.736 or 466.07;

76.7 (2) employees who are subject to a contract or other agreement governing  
 76.8 indemnification rights;

76.9 (3) employees and employers who are governed by indemnification provisions under  
 76.10 section 302A.521, 317A.521, ~~or 322B.699~~, or 322C.0408, or similar laws of this state or  
 76.11 another state specifically governing indemnification of employees of business or nonprofit  
 76.12 corporations, limited liability companies, or other legal entities; or

76.13 (4) indemnification rights for a particular liability specifically governed by other law.

76.14 Sec. 3. Minnesota Statutes 2012, section 270C.721, is amended to read:

76.15 **270C.721 REVOCATION OF CERTIFICATES OF AUTHORITY TO DO**  
 76.16 **BUSINESS IN THIS STATE.**

76.17 When a foreign corporation authorized to do business in this state under chapter  
 76.18 303, or a foreign limited liability company or partnership authorized to do business in  
 76.19 this state under chapter 322B or 322C, fails to comply with a law administered by the  
 76.20 commissioner that imposes a tax, the commissioner may serve the secretary of state with  
 76.21 a certified copy of an order finding such failure to comply. The secretary of state, upon  
 76.22 receipt of the order, shall revoke the ~~certificate~~ of authority to do business in this state,  
 76.23 and shall reinstate the ~~certificate~~ entity under section 303.19 ~~or~~ 322B.960, subdivision 6;  
 76.24 or 322C.0706 only when the corporation or limited liability company or partnership has  
 76.25 obtained from the commissioner an order finding that the corporation or limited liability  
 76.26 company or partnership is in compliance with such law. An order requiring revocation  
 76.27 of a certificate shall not be issued unless the commissioner gives the corporation or  
 76.28 limited liability company or partnership 30 days' written notice of the proposed order,  
 76.29 specifying the violations of law, and affording an opportunity to request a contested case  
 76.30 hearing under chapter 14.

76.31 Sec. 4. Minnesota Statutes 2012, section 273.124, subdivision 8, is amended to read:

76.32 Subd. 8. **Homestead owned by or leased to family farm corporation, joint farm**  
 76.33 **venture, limited liability company, or partnership.** (a) Each family farm corporation;

77.1 each joint family farm venture; and each limited liability company or partnership which  
77.2 operates a family farm; is entitled to class 1b under section 273.13, subdivision 22,  
77.3 paragraph (b), or class 2a assessment for one homestead occupied by a shareholder,  
77.4 member, or partner thereof who is residing on the land, and actively engaged in farming of  
77.5 the land owned by the family farm corporation, joint family farm venture, limited liability  
77.6 company, or partnership. Homestead treatment applies even if legal title to the property is  
77.7 in the name of the family farm corporation, joint family farm venture, limited liability  
77.8 company, or partnership, and not in the name of the person residing on it.

77.9 "Family farm corporation," "family farm," and "partnership operating a family  
77.10 farm" have the meanings given in section 500.24, except that the number of allowable  
77.11 shareholders, members, or partners under this subdivision shall not exceed 12. "Limited  
77.12 liability company" has the meaning contained in sections 322B.03, subdivision 28, or  
77.13 322C.0102, subdivision 12, and 500.24, subdivision 2, paragraphs (l) and (m). "Joint  
77.14 family farm venture" means a cooperative agreement among two or more farm enterprises  
77.15 authorized to operate a family farm under section 500.24.

77.16 (b) In addition to property specified in paragraph (a), any other residences owned  
77.17 by family farm corporations, joint family farm ventures, limited liability companies,  
77.18 or partnerships described in paragraph (a) which are located on agricultural land and  
77.19 occupied as homesteads by its shareholders, members, or partners who are actively  
77.20 engaged in farming on behalf of that corporation, joint farm venture, limited liability  
77.21 company, or partnership must also be assessed as class 2a property or as class 1b property  
77.22 under section 273.13.

77.23 (c) Agricultural property that is owned by a member, partner, or shareholder of a  
77.24 family farm corporation or joint family farm venture, limited liability company operating  
77.25 a family farm, or by a partnership operating a family farm and leased to the family farm  
77.26 corporation, limited liability company, partnership, or joint farm venture, as defined in  
77.27 paragraph (a), is eligible for classification as class 1b or class 2a under section 273.13, if  
77.28 the owner is actually residing on the property, and is actually engaged in farming the land  
77.29 on behalf of that corporation, joint farm venture, limited liability company, or partnership.  
77.30 This paragraph applies without regard to any legal possession rights of the family farm  
77.31 corporation, joint family farm venture, limited liability company, or partnership under  
77.32 the lease.

77.33 (d) Nonhomestead agricultural property that is owned by a family farm corporation,  
77.34 joint farm venture, limited liability company, or partnership; and located not farther than  
77.35 four townships or cities, or combination thereof, from agricultural land that is owned, and  
77.36 used for the purposes of a homestead by an individual who is a shareholder, member,

78.1 or partner of the corporation, venture, company, or partnership; is entitled to receive  
78.2 the first tier homestead class rate on any remaining market value in the first homestead  
78.3 class tier that is in excess of the market value of the shareholder's, member's, or partner's  
78.4 class 2 agricultural homestead property, if the owner, or someone acting on the owner's  
78.5 behalf notifies the county assessor by July 1 that the property may be eligible under this  
78.6 paragraph for the current assessment year, for taxes payable in the following year. As used  
78.7 in this paragraph, "agricultural property" means property classified as 2a under section  
78.8 273.13, along with any contiguous property classified as 2b under section 273.13, if the  
78.9 contiguous 2a and 2b properties are under the same ownership.

78.10 Sec. 5. Minnesota Statutes 2012, section 290.01, subdivision 3b, is amended to read:

78.11 Subd. 3b. **Limited liability company.** For purposes of this chapter and chapter  
78.12 289A, a limited liability company, ~~including a nonprofit limited liability company under~~  
78.13 ~~section 322B.975~~, that is formed under either the laws of this state or under similar laws  
78.14 of another state, will be treated as an entity similar to its treatment for federal income  
78.15 tax purposes.

78.16 **EFFECTIVE DATE.** This section is effective January 1, 2015.

78.17 Sec. 6. Minnesota Statutes 2012, section 302A.011, is amended by adding a  
78.18 subdivision to read:

78.19 Subd. 67. **Converting corporation.** "Converting corporation" means a converting  
78.20 organization that is a corporation.

78.21 Sec. 7. Minnesota Statutes 2012, section 302A.011, is amended by adding a  
78.22 subdivision to read:

78.23 Subd. 68. **Organizational documents.** "Organizational documents" means:

78.24 (1) for a domestic or foreign general partnership, its partnership agreement;

78.25 (2) for a limited partnership or foreign limited partnership, its certificate of limited  
78.26 partnership and partnership agreement;

78.27 (3) for a domestic or foreign limited liability company, its certificate or articles  
78.28 of organization and operating agreement, or comparable documents as provided in its  
78.29 governing statute;

78.30 (4) for a business trust, its agreement of trust and declaration of trust;

78.31 (5) for a domestic or foreign corporation for profit, its articles of incorporation,  
78.32 bylaws, and other agreements among its shareholders that are authorized by its governing  
78.33 statute, or comparable documents as provided in its governing statute; and

79.1 (6) for any other organization, the basic agreements or other documents that create  
79.2 the organization and determine its internal governance and the relations among the persons  
79.3 that own it, have an interest in it, or are members of it.

79.4 Sec. 8. Minnesota Statutes 2012, section 302A.011, is amended by adding a  
79.5 subdivision to read:

79.6 Subd. 69. **Personal liability.** "Personal liability" means liability for a debt,  
79.7 obligation, or other liability of an organization that is imposed on a person that co-owns,  
79.8 has an interest in, or is a member of the organization.

79.9 (1) by the governing statute solely by reason of the person co-owning, having an  
79.10 interest in, or being a member of the organization; or

79.11 (2) by the organization's organizational documents under a provision of the governing  
79.12 statute authorizing those documents to make one or more specified persons liable for all or  
79.13 specified debts, obligations, or other liabilities of the organization solely by reason of the  
79.14 person or persons co-owning, having an interest in, or being a member of the organization.

79.15 Sec. 9. Minnesota Statutes 2012, section 302A.115, subdivision 1, is amended to read:

79.16 Subdivision 1. **Requirements; prohibitions.** The corporate name:

79.17 (a) Shall be in the English language or in any other language expressed in English  
79.18 letters or characters;

79.19 (b) Shall contain the word "corporation," "incorporated," or "limited," or shall  
79.20 contain an abbreviation of one or more of these words, or the word "company" or the  
79.21 abbreviation "Co." if that word or abbreviation is not immediately preceded by the word  
79.22 "and" or the character "&;

79.23 (c) Shall not contain a word or phrase that indicates or implies that it is incorporated  
79.24 for a purpose other than a legal business purpose;

79.25 (d) Shall be distinguishable upon the records in the Office of the Secretary of  
79.26 State from the name of each domestic corporation, limited partnership, limited liability  
79.27 partnership, and limited liability company, whether profit or nonprofit, and each foreign  
79.28 corporation, limited partnership, limited liability partnership, and limited liability company  
79.29 on file, authorized or registered to do business in this state at the time of filing, whether  
79.30 profit or nonprofit, and each name the right to which is, at the time of incorporation,  
79.31 reserved as provided for in sections 5.35, 302A.117, 321.0109, 322B.125, 322C.0109, or  
79.32 333.001 to 333.54, unless there is filed with the articles one of the following:

79.33 (1) The written consent of the domestic corporation, limited partnership, limited  
79.34 liability partnership, or limited liability company, or the foreign corporation, limited

80.1 partnership, limited liability partnership, or limited liability company authorized or  
80.2 registered to do business in this state or the holder of a reserved name or a name filed by  
80.3 or registered with the secretary of state under sections 333.001 to 333.54 having a name  
80.4 that is not distinguishable;

80.5 (2) A certified copy of a final decree of a court in this state establishing the prior  
80.6 right of the applicant to the use of the name in this state; or

80.7 (3) The applicant's affidavit that the domestic or foreign corporation, limited  
80.8 partnership, or limited liability company with the name that is not distinguishable has  
80.9 been incorporated or on file in this state for at least three years prior to the affidavit, if it  
80.10 is a domestic corporation, limited partnership, or limited liability company, or has been  
80.11 authorized or registered to do business in this state for at least three years prior to the  
80.12 affidavit, if it is a foreign corporation, limited partnership, or limited liability company,  
80.13 or that the holder of a name filed or registered with the secretary of state under sections  
80.14 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit;  
80.15 that the domestic or foreign corporation, limited partnership, or limited liability company  
80.16 or holder has not during the three-year period before the affidavit filed any document with  
80.17 the secretary of state; that the applicant has mailed written notice to the domestic or  
80.18 foreign corporation, limited partnership, or limited liability company or the holder of a  
80.19 name filed or registered with the secretary of state under sections 333.001 to 333.54 by  
80.20 certified mail, return receipt requested, properly addressed to the registered office of the  
80.21 domestic or foreign corporation or limited liability company or in care of the agent of the  
80.22 limited partnership, or the address of the holder of a name filed or registered with the  
80.23 secretary of state under sections 333.001 to 333.54, shown in the records of the secretary  
80.24 of state, stating that the applicant intends to use a name that is not distinguishable and the  
80.25 notice has been returned to the applicant as undeliverable to the addressee domestic or  
80.26 foreign corporation, limited partnership, limited liability company, or holder of a name  
80.27 filed or registered with the secretary of state under sections 333.001 to 333.54; that the  
80.28 applicant, after diligent inquiry, has been unable to find any telephone listing for the  
80.29 domestic or foreign corporation, limited partnership, or limited liability company with  
80.30 the name that is not distinguishable in the county in which is located the registered office  
80.31 of the domestic or foreign corporation, limited partnership, or limited liability company  
80.32 shown in the records of the secretary of state or has been unable to find any telephone  
80.33 listing for the holder of a name filed or registered with the secretary of state under sections  
80.34 333.001 to 333.54 in the county in which is located the address of the holder shown in  
80.35 the records of the secretary of state; and that the applicant has no knowledge that the  
80.36 domestic or foreign corporation, limited partnership, limited liability company, or holder



81.1 of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is  
81.2 currently engaged in business in this state.

81.3 Sec. 10. Minnesota Statutes 2012, section 302A.681, is amended to read:

81.4 **302A.681 CONVERSION OF CORPORATIONS AND LIMITED LIABILITY**  
81.5 **COMPANIES.**

81.6 Subdivision 1. ~~Conversions authorized~~ Authorization. A corporation may  
81.7 become a domestic limited liability company, and a domestic limited liability company  
81.8 may become a An organization, other than a corporation, a foreign corporation, a nonprofit  
81.9 corporation, or an organization owning assets irrevocably dedicated to a charitable  
81.10 purpose, may convert to a corporation, and a corporation may convert to an organization  
81.11 other than a foreign corporation, in each case pursuant to a plan of conversion: approved  
81.12 in the manner provided in sections 302A.681 to 302A.692, if:

81.13 (1) the other organization's governing statute authorizes the conversion; and

81.14 (2) the other organization complies with its governing statute and organizational  
81.15 documents in effecting the conversion.

81.16 ~~Subd. 2. Certain definitions.~~ (a) For purposes of sections 302A.681 to 302A.691,  
81.17 the words, terms, and phrases in paragraphs (b) to (h) have the meanings given them:

81.18 (b) "Articles of organization" has the same meaning as it does under section  
81.19 322B.03, subdivision 6.

81.20 (c) "Board of governors" has the same meaning as it does under section 322B.03,  
81.21 subdivision 7.

81.22 (d) "Class," when used with reference to membership interests, has the same  
81.23 meaning as it does under section 322B.03, subdivision 10.

81.24 (e) "Governor" has the same meaning as it does under section 322B.03, subdivision  
81.25 24.

81.26 (f) "Member" has the same meaning as it does under section 322B.03, subdivision 30.

81.27 (g) "Membership interest" has the same meaning as it does under section 322B.03,  
81.28 subdivision 31.

81.29 (h) "Series," when used with reference to membership interests, has the same  
81.30 meaning as it does under section 322B.03, subdivision 44.

81.31 Sec. 11. Minnesota Statutes 2012, section 302A.683, is amended to read:

81.32 **302A.683 PLAN OF CONVERSION.**

81.33 A plan of conversion must contain:

82.1 (1) the name, form, and jurisdiction of the governing statute of the converting  
82.2 organization before conversion;

82.3 (2) the name, form, and jurisdiction of the governing statute of the converted  
82.4 organization after conversion;

82.5 (3) ~~whether the converted organization is a corporation or a limited liability company;~~

82.6 (4) the terms and conditions of the ~~proposed~~ conversion;

82.7 (5) including the manner and basis of for converting each ownership interest in the  
82.8 converting organization into ownership interests in the converted converting organization  
82.9 or, in whole or in part, into money or other property; into any combination of money,  
82.10 interests in the converted organization, and other consideration;

82.11 (6) ~~a copy of the proposed articles of incorporation or articles of organization~~ (4) the  
82.12 organizational documents of the converted organization; and

82.13 (7) (5) any other provisions with respect to the ~~proposed~~ conversion that are deemed  
82.14 necessary or desirable.

82.15 Sec. 12. Minnesota Statutes 2012, section 302A.685, is amended to read:

82.16 **302A.685 PLAN APPROVAL ACTION ON PLAN OF CONVERSION BY**  
82.17 **CONVERTING CORPORATION.**

82.18 Subdivision 1. **Board approval; notice to owners.** ~~A~~ If the converting organization  
82.19 is a corporation, a resolution containing the plan of conversion must be approved by the  
82.20 affirmative vote of a majority of the directors ~~or governors~~ present at a meeting of the  
82.21 converting corporation's board of directors or the board of governors of the converting  
82.22 organization and must then be submitted at a regular or a special meeting ~~to the owners~~  
82.23 of the converting ~~organization~~ corporation's shareholders. Written notice must be given  
82.24 to every ~~owner~~ shareholder of the converting ~~organization~~ corporation, whether or not  
82.25 entitled to vote at the meeting, not less than 14 days nor more than 60 days before  
82.26 the meeting, in the manner provided in section 302A.435 ~~for notice of a meeting of~~  
82.27 ~~shareholders or in the manner provided in section 322B.34 for notice of a meeting of~~  
82.28 ~~members~~. The written notice must state that a purpose of the meeting is to consider the  
82.29 proposed plan of conversion. A copy or short description of the plan of conversion must  
82.30 be included in or enclosed with the notice.

82.31 Subd. 2. **Approval by owners shareholders.** At the meeting, a vote of the ~~owners~~  
82.32 shareholders must be taken on the proposed plan. The plan of conversion is adopted when  
82.33 approved by the affirmative vote of the holders of a majority of the voting power of all  
82.34 shares ~~or membership interests~~ entitled to vote. A class or series of shares ~~or membership~~  
82.35 ~~interests~~ is entitled to vote as a class or series on the approval of the plan.

83.1 Sec. 13. **[302A.6871] FILINGS REQUIRED BY CONVERTING**  
 83.2 **CORPORATION.**

83.3 After a plan of conversion is approved by a converting corporation, the converting  
 83.4 corporation must cause articles of conversion to be filed with the secretary of state. The  
 83.5 articles of conversion must be signed on behalf of the converting corporation and must  
 83.6 include:

83.7 (1) the plan of conversion;

83.8 (2) a statement that the converting corporation has been converted into the converted  
 83.9 organization;

83.10 (3) the name and form of the converted organization and the jurisdiction of its  
 83.11 governing statute;

83.12 (4) a statement that the conversion was approved as required by this chapter;

83.13 (5) a statement that the conversion was approved as required by the governing  
 83.14 statute of the converted organization; and

83.15 (6) if the converted organization is a foreign organization not authorized to transact  
 83.16 business in this state, the street address of an office which the secretary of state may use  
 83.17 for the purposes of section 302A.691, subdivision 3.

83.18 Sec. 14. **[302A.688] FILINGS REQUIRED WHEN CORPORATION IS**  
 83.19 **CONVERTED ORGANIZATION.**

83.20 If the converting organization is not a corporation, the converting organization  
 83.21 must cause articles of conversion to be filed with the secretary of state. The articles of  
 83.22 conversion must be signed on behalf of the converting organization and must include, in  
 83.23 addition to the information required by section 302A.111, subdivision 1:

83.24 (1) the plan of conversion;

83.25 (2) a statement that the converted organization has been converted from the  
 83.26 converting organization;

83.27 (3) the name and form of the converting organization and the jurisdiction of its  
 83.28 governing statute; and

83.29 (4) a statement that the conversion was approved as required by the governing  
 83.30 statute of the converting organization.

83.31 Sec. 15. Minnesota Statutes 2012, section 302A.689, is amended to read:

83.32 **302A.689 ABANDONMENT OF CONVERSION.**

83.33 Subdivision 1. **By shareholders or plan.** After a plan of conversion has been  
 83.34 approved by the ~~owners~~ shareholders entitled to vote on the approval of the plan as

84.1 provided in section 302A.685, and before the effective date of the plan, it may be  
 84.2 abandoned by a converting corporation:

84.3 (1) if the ~~owners of the converting organization~~ shareholders entitled to vote on the  
 84.4 approval of the plan as provided in section 302A.685 have approved the abandonment at a  
 84.5 meeting by the affirmative vote of the holders of a majority of the voting power of the  
 84.6 ~~shares or membership interests~~ entitled to vote;

84.7 (2) if the plan itself provides for abandonment and all conditions for abandonment  
 84.8 set forth in the plan are met; or

84.9 (3) pursuant to subdivision 2.

84.10 Subd. 2. **By board.** A plan of conversion may be abandoned by a converting  
 84.11 corporation, before the effective date of the plan, by a resolution of the board of directors  
 84.12 ~~or the board of governors~~ of the converting ~~organization abandoning the plan of~~  
 84.13 ~~conversion~~ corporation approved by the affirmative vote of a majority of the directors ~~or~~  
 84.14 ~~governors~~ present.

84.15 Subd. 3. **Filing of articles.** If articles of conversion have been filed with the  
 84.16 secretary of state, but have not yet become effective, the converting ~~organization shall~~  
 84.17 corporation must file with the secretary of state articles of abandonment that contain:

84.18 (1) the name of the converting ~~organization~~ corporation;

84.19 (2) the provision of this section under which the plan is abandoned; and

84.20 (3) if the plan is abandoned under subdivision 2, the text of the resolution  
 84.21 abandoning the plan.

84.22 Sec. 16. Minnesota Statutes 2012, section 302A.691, is amended to read:

84.23 **302A.691 EFFECTIVE DATE OR TIME OF CONVERSION; EFFECT.**

84.24 Subdivision 1. **Effective date or time.** A conversion is effective when the articles  
 84.25 of conversion are filed with the secretary of state or on a later date or at a later time  
 84.26 specified in the articles of conversion.

84.27 Subd. 2. **Effect on organization.** (a) A converted organization is for all purposes the  
 84.28 same organization as the converting organization, having been incorporated ~~or~~<sub>2</sub> organized<sub>2</sub>  
 84.29 or formed on the date that the converting organization was originally incorporated ~~or~~<sub>2</sub>  
 84.30 organized, or formed.

84.31 (b) When a conversion becomes effective:

84.32 (1) ~~if the converted organization is a corporation, the converted organization has~~  
 84.33 ~~all the rights, privileges, immunities, and powers, and is subject to all the duties and~~  
 84.34 ~~liabilities, of a corporation incorporated under this chapter;~~

85.1 ~~(2) if the converted organization is a limited liability company, the converted~~  
 85.2 ~~organization has all the rights, privileges, immunities, and powers, and is subject to all the~~  
 85.3 ~~duties and liabilities, of a limited liability company organized under chapter 322B;~~

85.4 ~~(3) all property owned by the converting organization remains vested in the~~  
 85.5 ~~converted organization;~~

85.6 ~~(4) (2) all debts, liabilities, and other obligations of the converting organization~~  
 85.7 ~~continue as obligations of the converted organization;~~

85.8 ~~(5) (3) an action or proceeding pending by or against the converting organization~~  
 85.9 ~~may be continued as if the conversion had not occurred; and~~

85.10 ~~(6) (4) all rights, privileges, immunities, and powers of the converting organization~~  
 85.11 ~~remain vested in the converted organization.~~

85.12 Subd. 3. ~~Effect on shareholders or members. Foreign organization.~~ When  
 85.13 a conversion becomes effective, each share or membership interest in the converting  
 85.14 organization is deemed to be converted into shares or membership interests in the converted  
 85.15 organization or, in whole or in part, into money or other property to be received under the  
 85.16 plan by the shareholders or the members, subject to any dissenters' rights under section  
 85.17 302A.471, in the case of shareholders of the converting organization, or section 322B.383,  
 85.18 in the case of members of the converting organization. A converted organization that is a  
 85.19 foreign organization consents to the jurisdiction of the courts of this state to enforce any  
 85.20 debt, obligation, or other liability for which the converting corporation is liable if, before  
 85.21 the conversion, the converting corporation was subject to suit in this state on the debt,  
 85.22 obligation, or other liability. A converted organization that is a foreign organization and  
 85.23 not authorized to transact business in this state appoints the secretary of state as its agent  
 85.24 for service of process for purposes of enforcing a debt, obligation, or other liability under  
 85.25 this subdivision. Service on the secretary of state under this subdivision must be made in  
 85.26 the same manner and has the same consequences as in section 5.25, subdivisions 4 and 5.

85.27 Sec. 17. **[302A.692] RESTRICTIONS ON APPROVAL OF CONVERSIONS.**

85.28 Subdivision 1. **Personal liability of shareholder.** If a shareholder of a converting  
 85.29 corporation will have personal liability with respect to a converted organization, approval  
 85.30 or amendment of a plan of conversion is ineffective without the consent of the shareholder,  
 85.31 unless:

85.32 (1) a shareholder control agreement of the converting corporation provides for  
 85.33 approval of a conversion with the consent of fewer than all the members; and

85.34 (2) the shareholder has consented to the provision of the shareholder control  
 85.35 agreement.

86.1            Subd. 2. **Consent.** A shareholder does not give the consent required by subdivision  
86.2 1 merely by consenting to a provision of a shareholder control agreement that permits  
86.3 the shareholder control agreement to be amended with the consent of fewer than all  
86.4 shareholders.

86.5            Sec. 18. Minnesota Statutes 2012, section 308A.121, subdivision 1, is amended to read:

86.6            Subdivision 1. **Name.** The name of a cooperative must distinguish the cooperative  
86.7 upon the records in the Office of the Secretary of State from the name of a domestic  
86.8 corporation, whether profit or nonprofit, or a limited partnership, or a foreign corporation  
86.9 or a limited partnership, whether profit or nonprofit, a limited liability company, whether  
86.10 domestic or foreign, a limited liability partnership, whether domestic or foreign, on file,  
86.11 authorized or registered to do business in this state at the time of filing or a name the  
86.12 right to which is, at the time of incorporation, reserved or provided for in sections 5.35,  
86.13 302A.117, 317A.117, 321.0109, 322B.125, 322C.0109, or 333.001 to 333.54.

86.14            Sec. 19. Minnesota Statutes 2012, section 308B.801, subdivision 1, is amended to read:

86.15            Subdivision 1. **Authorization.** Unless otherwise prohibited, cooperatives organized  
86.16 under the laws of this state, including cooperatives organized under this chapter or chapter  
86.17 308A, may merge or consolidate with each other, a Minnesota limited liability company  
86.18 under the provisions of section 322B.755 or sections 322C.1001 to 322C.1015, or  
86.19 other business entities organized under the laws of another state by complying with the  
86.20 provisions of this section and the law of the state where the surviving or new business  
86.21 entity will exist. A cooperative may not merge or consolidate with a business entity  
86.22 organized under the laws of this state, other than a cooperative organized under chapter  
86.23 308A, unless the law governing the business entity expressly authorizes merger or  
86.24 consolidation with a cooperative. This subdivision does not authorize a foreign business  
86.25 entity to do any act not authorized by the law governing the foreign business entity.

86.26            Sec. 20. Minnesota Statutes 2012, section 308B.801, subdivision 2, is amended to read:

86.27            Subd. 2. **Plan.** To initiate a merger or consolidation of a cooperative, a written plan  
86.28 of merger or consolidation shall be prepared by the board or by a committee selected by  
86.29 the board to prepare a plan. The plan shall state:

86.30            (1) the names of the constituent domestic cooperatives, the name of any Minnesota  
86.31 limited liability company that is a party to the merger, to the extent authorized under  
86.32 section 322B.755 or sections 322C.1001 to 322C.1005 and 322C.1015, and any foreign  
86.33 business entities;

87.1 (2) the name of the surviving or new domestic cooperative, Minnesota limited liability  
87.2 company as required by section 322B.755 or 322C.1002, or other foreign business entity;

87.3 (3) the manner and basis of converting membership or ownership interests of the  
87.4 constituent domestic cooperatives, the surviving Minnesota limited liability company as  
87.5 provided in section 322B.755 or 322C.1002, or foreign business entities into membership  
87.6 or ownership interests in the surviving or new domestic cooperative, the surviving  
87.7 Minnesota limited liability company as authorized in section 322B.755 or 322C.1002, or  
87.8 foreign business entity;

87.9 (4) the terms of the merger or consolidation;

87.10 (5) the proposed effect of the consolidation or merger on the members and patron  
87.11 members of each constituent domestic cooperative; and

87.12 (6) for a consolidation, the plan shall contain the articles of the entity or organizational  
87.13 documents to be filed with the state in which the entity is organized or, if the surviving  
87.14 organization is a Minnesota limited liability company, the articles of organization.

87.15 Sec. 21. Minnesota Statutes 2012, section 308B.801, subdivision 5, is amended to read:

87.16 Subd. 5. **Effect of merger.** For a merger that does not involve a Minnesota limited  
87.17 liability company, the following shall apply to the effect of a merger:

87.18 (a) After the effective date, the domestic cooperative, Minnesota limited liability  
87.19 company, if party to the plan, and any foreign business entity that is a party to the plan  
87.20 become a single entity. For a merger, the surviving business entity is the business entity  
87.21 designated in the plan. For a consolidation, the new domestic cooperative, the Minnesota  
87.22 limited liability company, if any, and any foreign business entity is the business entity  
87.23 provided for in the plan. Except for the surviving or new domestic cooperative, Minnesota  
87.24 limited liability company, or foreign business entity, the separate existence of each merged  
87.25 or consolidated domestic or foreign business entity that is a party to the plan ceases on the  
87.26 effective date of the merger or consolidation.

87.27 (b) The surviving or new domestic cooperative, Minnesota limited liability company,  
87.28 or foreign business entity possesses all of the rights and property of each of the merged  
87.29 or consolidated business entities and is responsible for all their obligations. The title  
87.30 to property of the merged or consolidated domestic cooperative or foreign business  
87.31 entity is vested in the surviving or new domestic cooperative, Minnesota limited liability  
87.32 company, or foreign business entity without reversion or impairment of the title caused  
87.33 by the merger or consolidation.

87.34 (c) If a merger involves a Minnesota limited liability company, this subdivision is  
87.35 subject to the provisions of section 322B.755 or 322C.1002.

88.1 Sec. 22. Minnesota Statutes 2012, section 308B.805, subdivision 1, is amended to read:

88.2 Subdivision 1. **When authorized; contents of plan.** (a) For purposes of this section,  
88.3 "subsidiary" means a domestic cooperative, a Minnesota limited liability company, or  
88.4 a foreign cooperative, and "cooperative" means a domestic cooperative. A Minnesota  
88.5 limited liability company may only participate in a merger under this section to the extent  
88.6 authorized under section 322B.755 or 322C.1002. A parent domestic cooperative or a  
88.7 subsidiary that is a domestic cooperative may complete the merger of a subsidiary as  
88.8 provided in this section, provided however, if either the parent or the subsidiary is a business  
88.9 entity organized under the laws of this state, the merger of the subsidiary is not authorized  
88.10 under this section unless the law governing the business entity expressly authorizes merger  
88.11 with a cooperative. A parent cooperative owning at least 90 percent of the outstanding  
88.12 ownership interests of each class and series of a subsidiary directly, or indirectly through  
88.13 related organizations, other than classes or series that, absent this section, would otherwise  
88.14 not be entitled to vote on the merger, may merge the subsidiary into itself or into any other  
88.15 subsidiary at least 90 percent of the outstanding ownership interests of each class and  
88.16 series of which is owned by the parent cooperative directly, or indirectly through related  
88.17 organizations, other than classes or series that, absent this section, would otherwise not be  
88.18 entitled to vote on the merger, without a vote of the members of itself or any subsidiary or  
88.19 may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries  
88.20 under this section. A resolution approved by the affirmative vote of a majority of the  
88.21 directors of the parent cooperative present shall set forth a plan of merger that contains:

88.22 (1) the name of the subsidiary or subsidiaries, the name of the parent, and the name  
88.23 of the surviving cooperative;

88.24 (2) the manner and basis of converting the membership interests of the subsidiary or  
88.25 subsidiaries or parent into securities of the parent, subsidiary, or of another cooperative  
88.26 or, in the whole or in part, into money or other property;

88.27 (3) if the parent is a constituent cooperative but is not the surviving cooperative in  
88.28 the merger, a provision for the pro rata issuance of membership interests of the surviving  
88.29 cooperative to the holders of membership interests of the parent on surrender of any  
88.30 certificates for shares of the parent; and

88.31 (4) if the surviving cooperative is a subsidiary, a statement of any amendments to the  
88.32 articles of the surviving cooperative that will be part of the merger.

88.33 (b) If the parent is a constituent cooperative and the surviving cooperative in the  
88.34 merger, it may change its cooperative name, without a vote of its members, by the  
88.35 inclusion of a provision to that effect in the resolution of merger setting forth the plan of



89.1 merger that is approved by the affirmative vote of a majority of the directors of the parent  
89.2 present. Upon the effective date of the merger, the name of the parent shall be changed.

89.3 (c) If the parent is a constituent cooperative but is not the surviving cooperative in the  
89.4 merger, the resolution is not effective unless it is also approved by the affirmative vote of the  
89.5 holders of a majority of the voting power of all membership interests of the parent entitled  
89.6 to vote at a regular or special meeting if the parent is a cooperative, or in accordance with  
89.7 the laws under which it is organized if the parent is a foreign business entity or cooperative.

89.8 Sec. 23. Minnesota Statutes 2012, section 308B.835, subdivision 2, is amended to read:

89.9 Subd. 2. **Generally.** (a) A merger may be abandoned:

89.10 (1) if the members of each of the constituent domestic cooperatives entitled to vote  
89.11 on the approval of the plan have approved the abandonment at a meeting by the affirmative  
89.12 vote of the holders of a majority of the voting power of the membership interests entitled  
89.13 to vote; if the merger is with a domestic cooperative and a Minnesota limited liability  
89.14 company or foreign business entity, if abandonment is approved in such manner as may be  
89.15 required by section 322B.755 or 322C.1003 for the involvement of a Minnesota limited  
89.16 liability company, or for a foreign business entity by the laws of the state under which  
89.17 the foreign business entity is organized; and the members of a constituent domestic  
89.18 cooperative are not entitled to vote on the approval of the plan, the board of the constituent  
89.19 domestic cooperative has approved the abandonment by the affirmative vote of a majority  
89.20 of the directors present;

89.21 (2) if the plan itself provides for abandonment and all conditions for abandonment  
89.22 set forth in the plan are met; or

89.23 (3) under paragraph (b).

89.24 (b) A plan of merger may be abandoned before the effective date of the plan by a  
89.25 resolution of the board of any constituent domestic cooperative abandoning the plan of  
89.26 merger approved by the affirmative vote of a majority of the directors present, subject  
89.27 to the contract rights of any other person under the plan. If a plan of merger is with a  
89.28 domestic or foreign business entity, the plan of merger may be abandoned before the  
89.29 effective date of the plan by a resolution of the foreign business entity adopted according  
89.30 to the laws of the state under which the foreign business entity is organized, subject to  
89.31 the contract rights of any other person under the plan. If the plan of merger is with  
89.32 a Minnesota limited liability company, the plan of merger may be abandoned by the  
89.33 Minnesota limited liability company as provided in section 322B.755 or 322C.1003,  
89.34 subject to the contractual rights of any other person under the plan.

90.1 (c) If articles of merger have been filed with the secretary of state, but have not  
90.2 yet become effective, the constituent organizations, in the case of abandonment under  
90.3 paragraph (a), clause (1), the constituent organizations or any one of them, in the case  
90.4 of abandonment under paragraph (a), clause (2), or the abandoning organization in the  
90.5 case of abandonment under paragraph (b), shall file with the secretary of state articles of  
90.6 abandonment that contain:

- 90.7 (1) the names of the constituent organizations;  
90.8 (2) the provisions of this section under which the plan is abandoned; and  
90.9 (3) if the plan is abandoned under paragraph (b), the text of the resolution  
90.10 abandoning the plan.

90.11 Sec. 24. Minnesota Statutes 2012, section 317A.115, subdivision 2, is amended to read:

90.12 Subd. 2. **Name must be distinguishable.** (a) A corporate name must be  
90.13 distinguishable upon the records in the Office of the Secretary of State from the name of a  
90.14 domestic corporation or limited partnership, a foreign corporation or limited partnership,  
90.15 whether profit or nonprofit, a limited liability company, whether domestic or foreign,  
90.16 on file, authorized to do business in this state at the time of filing, a limited liability  
90.17 partnership, whether domestic or foreign, or a name the right to which is, at the time of  
90.18 incorporation, reserved, registered, or provided for in section 5.35, 317A.117, 302A.117,  
90.19 321.0109, 322B.125 or 322C.0109, or sections 333.001 to 333.54, unless one of the  
90.20 following is filed with the articles:

- 90.21 (1) the written consent of the organization having the name that is not distinguishable;  
90.22 (2) a certified copy of a final decree of a court in this state establishing the prior right  
90.23 of the applicant to use its corporate name in this state; or  
90.24 (3) an affidavit of nonuse of the kind required by section 302A.115, subdivision 1,  
90.25 paragraph (d), clause (3).

90.26 (b) The secretary of state shall determine whether a name is distinguishable from  
90.27 another name for purposes of this section and section 317A.117.

90.28 (c) This subdivision does not affect the right of a corporation existing on January  
90.29 1, 1991, or a foreign corporation authorized to do business in this state on that date, to  
90.30 use its corporate name.

90.31 Sec. 25. Minnesota Statutes 2012, section 319B.02, subdivision 3, is amended to read:

90.32 Subd. 3. **Certificate of authority.** "Certificate of authority" means:

91.1 (1) with respect to a foreign firm that is a corporation, the certificate of authority  
 91.2 required under sections 303.01 to 303.24 and any notice filed under section 303.115 in  
 91.3 connection with that certificate; and

91.4 (2) with respect to a foreign firm that is a limited liability company, the certificate  
 91.5 of authority ~~required under~~ referred to in sections 322B.905 to 322B.955 or 322C.802  
 91.6 to 322C.804 and any notice filed under section 322B.92, clause (3), in connection with  
 91.7 that certificate.

91.8 Sec. 26. Minnesota Statutes 2012, section 319B.02, subdivision 22, is amended to read:

91.9 Subd. 22. **Update.** "Update" means:

91.10 (1) with respect to a Minnesota professional firm that is either a Minnesota  
 91.11 corporation or a Minnesota limited liability company, amend the organizational document;

91.12 (2) with respect to a foreign professional firm that is a foreign corporation, file a notice  
 91.13 under section 303.115 in connection with the foreign corporation's certificate of authority;

91.14 (3) with respect to a foreign firm that is a limited liability company, file a notice  
 91.15 ~~under section 322B.92, clause (3), in connection with the foreign limited liability~~  
 91.16 ~~company's~~ an amended certificate of authority;

91.17 (4) with respect to a Minnesota professional firm that is a limited liability partnership  
 91.18 and has an effective statement of qualification under section 323A.1001, amend that  
 91.19 statement of qualification; and

91.20 (5) with respect to a foreign professional firm that is a limited liability partnership  
 91.21 and has an effective statement of foreign qualification under section 323A.1102, amend  
 91.22 that statement of foreign qualification.

91.23 Sec. 27. Minnesota Statutes 2012, section 319B.10, subdivision 3, is amended to read:

91.24 Subd. 3. **Filings with secretary of state.** (a) For a Minnesota professional firm  
 91.25 involved in a merger, the document filed with the secretary of state to effectuate the  
 91.26 merger must state whether that Minnesota professional firm will survive the merger, and  
 91.27 if so, whether that Minnesota professional firm will remain a Minnesota professional  
 91.28 firm once the merger takes effect.

91.29 (b) For a foreign professional firm involved in a merger, the certificate filed with the  
 91.30 secretary of state under section 303.11 ~~or~~ 322B.92, or 322C.1004 must be accompanied  
 91.31 by a statement as to whether that foreign firm will survive the merger, and if so, whether  
 91.32 that foreign professional firm will remain a foreign professional firm once the merger  
 91.33 takes effect.

92.1 Sec. 28. Minnesota Statutes 2012, section 321.0108, is amended to read:

92.2 **321.0108 NAME.**

92.3 (a) The name of a limited partnership may contain the name of any partner.

92.4 (b) The name of a limited partnership that is not a limited liability limited partnership  
92.5 must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and may  
92.6 not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP"  
92.7 or "L.L.L.P."

92.8 (c) Except as provided in section 321.1206(e)(1), the name of a limited liability  
92.9 limited partnership must contain the phrase "limited liability limited partnership" or the  
92.10 abbreviation "LLLP" or "L.L.L.P." and must not otherwise contain the abbreviation  
92.11 "L.P." or "LP."

92.12 (d) The limited partnership name shall not contain a word or phrase that indicates or  
92.13 implies that it is formed for a purpose other than a legal purpose.

92.14 (e) The limited partnership name shall be distinguishable upon the records in the  
92.15 Office of the Secretary of State from the name of each domestic corporation, limited  
92.16 partnership, limited liability partnership, and limited liability company, whether profit or  
92.17 nonprofit, and each foreign corporation, limited partnership, limited liability partnership,  
92.18 and limited liability company on file, authorized or registered to do business in this state  
92.19 at the time of filing, whether profit or nonprofit, and each name the right to which is, at  
92.20 the time of formation, reserved as provided for in sections 5.35, 302A.117, 322A.03,  
92.21 322B.125, 322C.0109, or 333.001 to 333.54, unless there is filed with the certificate of  
92.22 limited partnership one of the following:

92.23 (1) the written consent of the domestic corporation, limited partnership, limited  
92.24 liability partnership, or limited liability company, or the foreign corporation, limited  
92.25 partnership, limited liability partnership, or limited liability company authorized or  
92.26 registered to do business in this state or the holder of a reserved name or a name filed by  
92.27 or registered with the secretary of state under sections 333.001 to 333.54 having a name  
92.28 that is not distinguishable;

92.29 (2) a certified copy of a final decree of a court in this state establishing the prior right  
92.30 of the applicant to the use of the name in this state; or

92.31 (3) the applicant's affidavit that the corporation, limited partnership, or limited  
92.32 liability company with the name that is not distinguishable has been incorporated or on file  
92.33 in this state for at least three years prior to the affidavit, if it is a domestic corporation,  
92.34 limited partnership, or limited liability company, or has been authorized or registered to  
92.35 do business in this state for at least three years prior to the affidavit, if it is a foreign  
92.36 corporation, limited partnership, or limited liability company, or that the holder of a name

93.1 filed or registered with the secretary of state under sections 333.001 to 333.54 filed or  
93.2 registered that name at least three years prior to the affidavit; that the corporation, limited  
93.3 partnership, or limited liability company or holder has not during the three-year period  
93.4 before the affidavit filed any document with the secretary of state; that the applicant has  
93.5 mailed written notice to the corporation, limited partnership, or limited liability company  
93.6 or the holder of a name filed or registered with the secretary of state under sections  
93.7 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the  
93.8 registered office of the corporation or limited liability company or in care of the agent of  
93.9 the limited partnership, or the address of the holder of a name filed or registered with the  
93.10 secretary of state under sections 333.001 to 333.54, shown in the records of the secretary  
93.11 of state, stating that the applicant intends to use a name that is not distinguishable and the  
93.12 notice has been returned to the applicant as undeliverable to the addressee corporation,  
93.13 limited partnership, limited liability company, or holder of a name filed or registered  
93.14 with the secretary of state under sections 333.001 to 333.54; that the applicant, after  
93.15 diligent inquiry, has been unable to find any telephone listing for the corporation, limited  
93.16 partnership, or limited liability company with the name that is not distinguishable in the  
93.17 county in which is located the registered office of the corporation, limited partnership, or  
93.18 limited liability company shown in the records of the secretary of state or has been unable  
93.19 to find any telephone listing for the holder of a name filed or registered with the secretary  
93.20 of state under sections 333.001 to 333.54 in the county in which is located the address  
93.21 of the holder shown in the records of the secretary of state; and that the applicant has no  
93.22 knowledge that the corporation, limited partnership, limited liability company, or holder  
93.23 of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is  
93.24 currently engaged in business in this state.

93.25 (f) The secretary of state shall determine whether a name is distinguishable from  
93.26 another name for purposes of this section and section 321.0109.

93.27 (g) This section and section 321.0109 do not abrogate or limit the law of unfair  
93.28 competition or unfair practices; nor sections 333.001 to 333.54; nor the laws of the United  
93.29 States with respect to the right to acquire and protect copyrights, trade names, trademarks,  
93.30 service names, service marks, or any other rights to the exclusive use of names or symbols;  
93.31 nor derogate the common law or the principles of equity.

93.32 (h) A limited partnership that is the surviving organization in a merger with one  
93.33 or more other organizations, or that is formed by the reorganization of one or more  
93.34 organizations, or that acquires by sale, lease, or other disposition to or exchange with an  
93.35 organization all or substantially all of the assets of another organization, including its  
93.36 name, may have the same name as that used in this state by any of the other organizations,

94.1 if the other organization whose name is sought to be used was organized under the laws  
94.2 of, or is authorized to transact business in, this state.

94.3 (i) The use of a name by a limited partnership in violation of this section does not  
94.4 affect or vitiate its existence, but a court in this state may, upon application of the state or  
94.5 of a person interested or affected, enjoin the limited partnership from doing business under  
94.6 a name assumed in violation of this section, although its certificate of limited partnership  
94.7 may have been filed with the secretary of state and a certificate of formation issued.

94.8 Sec. 29. **REVISOR'S INSTRUCTION.**

94.9 The revisor of statutes shall remove the references to sections of Minnesota Statutes,  
94.10 chapter 322B, in the sections amended in this article and elsewhere in Minnesota Statutes  
94.11 and make any necessary related changes.

94.12 **EFFECTIVE DATE.** This section is effective January 1, 2018.

94.13 Sec. 30. **REPEALER.**

94.14 Minnesota Statutes 2012, section 302A.687, is repealed.

94.15 Sec. 31. **EFFECTIVE DATE.**

94.16 Except as otherwise provided, this article is effective August 1, 2015.

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Article locations in H0977-1

ARTICLE 1 REVISED UNIFORM LIMITED LIABILITY COMPANY ACT ..... Page.Ln 2.1  
ARTICLE 2 CONFORMING CHANGES ..... Page.Ln 75.27

**302A.687 ARTICLES OF CONVERSION.**

Subdivision 1. **Contents of articles.** Upon receiving the approval required by section 302A.685, articles of conversion must be prepared that contain:

- (1) the plan of conversion;
- (2) the name of the converting organization immediately before the filing of the articles of conversion and the name to which the name of the converting organization is to be changed, which shall be a name that satisfies the laws applicable to the converted organization;
- (3) the type of organization that the converted organization will be;
- (4) a statement that the plan of conversion has been approved by the converting organization under section 302A.685; and
- (5) a copy of the articles of incorporation or the articles of organization of the converted organization.

Subd. 2. **Articles signed, filed.** The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state. Filing of the articles of conversion is also deemed to be a filing with the secretary of state of the articles of incorporation or the articles of organization of the converted organization.

Subd. 3. **Certificate.** The secretary of state shall issue a certificate of conversion and a certificate of incorporation or a certificate of organization to the converted organization or its legal representative.

**322B.01 CITATION.**

This chapter may be cited as the "Minnesota Limited Liability Company Act."

**322B.02 LAWS NOT TO APPLY.**

Sections 222.19, 222.23, and chapters 301, 316, and 556 do not apply to a limited liability company organized under or governed by this chapter.

**322B.03 DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

Subd. 2. **Acquiring organization.** "Acquiring organization" means the limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.

Subd. 3. **Address.** "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which must not be a post office box.

Subd. 6. **Articles or articles of organization.** "Articles" or "articles of organization" means, in the case of a limited liability company organized under or governed by this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of conversion, articles of abandonment, and articles of termination. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the foreign limited liability company's state of organization.

Subd. 6a. **Authenticated.** "Authenticated" means, with respect to an electronic communication, that the communication is delivered to the principal place of business of the limited liability company, or to a manager or agent of the limited liability company authorized by the limited liability company to receive the communication, and that the communication sets forth information from which the limited liability company can reasonably conclude that the communication was sent by the purported sender.

Subd. 7. **Board or board of governors.** "Board" or "board of governors" means the board of governors of a limited liability company.

Subd. 8. **Board member.** "Board member" means a natural person serving on the board of governors in the case of a limited liability company and a natural person serving on the board of directors in the case of a corporation.



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Subd. 10. **Class.** "Class," when used with reference to membership interests, means a category of membership interests that differs in one or more rights or preferences from another category of membership interests of the limited liability company.

Subd. 11. **Closely held limited liability company.** "Closely held limited liability company" means a limited liability company that does not have more than 35 members.

Subd. 12. **Constituent organization.** "Constituent organization" means a limited liability company or a foreign limited liability company or a domestic corporation or a foreign corporation that:

(1) in a merger is either the surviving organization or an organization that is merged into the surviving organization; or

(2) in an exchange is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

Subd. 13. **Contribution agreement.** "Contribution agreement" means an agreement between a person and a limited liability company, under which:

(1) the person agrees to make a contribution in the future; and

(2) the limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution, and reflect the contribution in the required records.

Subd. 14. **Contribution allowance agreement.** "Contribution allowance agreement" means an agreement between a person and a limited liability company, under which:

(1) the person has the right, but not the obligation, to make a contribution in the future; and

(2) the limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution, and reflect the contribution in the required records.

Subd. 15. **Dissolution.** "Dissolution" means that the limited liability company has incurred an event under section 322B.80, subdivision 1, subject only to sections 322B.823 and 322B.85, that obligates the limited liability company to wind up its affairs and to terminate its existence as a legal entity.

Subd. 17. **Distribution.** "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.

Subd. 17a. **Domestic corporation.** "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 302A.

Subd. 17b. **Electronic communication.** "Electronic communication" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication, and that may be directly reproduced in paper form by the recipient through an automated process.

Subd. 18. **Filed with the secretary of state.** "Filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed and accompanied by a filing fee of \$35, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, record the document in the Office of the Secretary of State, and return a document to the person who delivered it for filing.

Subd. 19. **Financial rights.** "Financial rights" means a member's rights:

(1) to share in profits and losses as provided in section 322B.326;

(2) to share in distributions as provided in section 322B.50;

(3) to receive interim distributions as provided in section 322B.51; and

(4) to receive termination distributions as provided in section 322B.873, subdivision 1, clause (3).

Subd. 19a. **Foreign corporation.** "Foreign corporation" means an organization organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under chapter 302A.

Subd. 20. **Foreign limited liability company.** "Foreign limited liability company" means a limited liability company 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.

Subd. 21. **Good faith.** "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

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Subd. 22. **Governance rights.** "Governance rights" means all a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.

Subd. 23. **Governing body.** "Governing body" means the body of an organization that has been charged with managing or directing the management of the business and affairs of the organization and which, if not the owners themselves, is responsible directly to the owners of the organization. In the case of a domestic limited liability company, the governing body is the board of governors, and in the case of a domestic corporation the governing body is the board of directors.

Subd. 24. **Governor.** "Governor" means a natural person serving on the board of governors.

Subd. 25. **Intentionally.** "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person intentionally violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

Subd. 26. **Know and knowledge.** A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know of the fact.

Subd. 27. **Legal representative.** "Legal representative" means a person empowered to act for another person, including, but not limited to, an agent, manager, partner, or associate, of an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of a person or a person's estate.

Subd. 28. **Limited liability company; domestic limited liability company.** "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by this chapter.

Subd. 29. **Manager.** "Manager" means the chief manager, the treasurer, a person elected, appointed, or otherwise designated as a manager pursuant to section 322B.676, and any other person considered elected as a manager pursuant to section 322B.68.

Subd. 30. **Member.** "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company. A person may be a member without having voting rights.

Subd. 31. **Membership interest.** "Membership interest" means a member's interest in a limited liability company consisting of a member's financial rights, a member's right to assign financial rights as provided in section 322B.31, a member's governance rights, and a member's right to assign governance rights as provided in section 322B.313.

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.

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

(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;

(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;

(3) communicated to the person orally;

(4) handed to the person; or

(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 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.

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

Subd. 33. **Bylaws.** "Bylaws" means rules, resolutions, or other provisions that:

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(1) relate to the management of the business or the regulation of the affairs of the limited liability company; and

(2) have been made expressly part of the bylaws by the action, taken from time to time under section 322B.603, by the board of governors or the members.

Subd. 34. **Organization.** "Organization" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Subd. 35. **Owners.** "Owners" means members in the case of a limited liability company and shareholders in the case of a corporation.

Subd. 36. **Ownership interests.** "Ownership interests" means membership interests in the case of a limited liability company and shares in the case of a corporation.

Subd. 36a. **Parent.** "Parent" of a specified organization means an organization that directly or indirectly through related organizations owns more than 50 percent of the voting power of the membership interests, shares, or other ownership interests entitled to vote for governors, directors, or other members of the governing body of the specified organization.

Subd. 37. **Person.** "Person" includes a natural person and an organization.

Subd. 38. **Pertains.** A contribution "pertains" to a particular series when the contribution is made in return for a membership interest in that particular series. A contribution pertains to a particular class when the class has no series and the contribution is made in return for a membership interest in the class. A contribution that pertains to a series does not pertain to the class of which the series is a part.

Subd. 39. **Principal executive office.** "Principal executive office" means an office where the elected or appointed chief manager of the limited liability company has an office. If the limited liability company has no elected or appointed chief manager, principal executive office means the registered office of the limited liability company.

Subd. 40. **Registered office.** "Registered office" means the place in this state designated in the articles of organization as the registered office of the limited liability company.

Subd. 41. **Related organization.** "Related organization" of a specified limited liability company means a parent or subsidiary of the specified limited liability company or another subsidiary of a parent of the specified limited liability company.

Subd. 41a. **Remote communication.** "Remote communication" means communication via electronic communication, conference telephone, video conference, the Internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Subd. 42. **Required records.** "Required records" are those records required to be maintained under section 322B.373.

Subd. 43. **Security.** "Security" has the meaning given it in section 80A.41(30).

Subd. 44. **Series.** "Series" means a category of membership interests, within a class of membership interests, that have some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

Subd. 45. **Signed.** (a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization, a member control agreement, or bylaws or a resolution approved by the governors as required by section 322B.653 or the members as required by section 322B.346.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

Subd. 45a. **Subsidiary.** "Subsidiary" of a specified organization means an organization of which more than 50 percent of the voting power of its membership interests, shares, or other ownership interests entitled to vote for governors, directors, or other members of the governing body of the organization is owned directly or indirectly through related organizations by the specified organization.

Subd. 46. **Successor organization.** "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under section 322B.833, subdivision 6, continues the business of the dissolved and terminated limited liability company.

Subd. 47. **Surviving organization.** "Surviving organization" means the limited liability company or domestic or foreign corporation resulting from a merger.

Subd. 48. **Termination.** "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is filed with the secretary of

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state under section 322B.826 or is considered filed with the secretary of state under section 322B.75, subdivision 2, clause (3).

Subd. 49. **Vote.** "Vote" includes authorization by written action.

Subd. 50. **Winding up.** "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on its business, except to the extent necessary for concluding its affairs, and disposes of its assets under section 322B.873.

Subd. 51. **Written action.** "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

### **322B.04 LEGAL RECOGNITION OF ELECTRONIC RECORDS AND SIGNATURES.**

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

(b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(d) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(e) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 2. **Electronic records and signatures.** For purposes of this chapter:

(1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

(2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

(3) if a provision requires a record to be in writing, an electronic record satisfies the requirement; and

(4) if a provision requires a signature, an electronic signature satisfies the requirement.

### **322B.10 PURPOSES.**

A limited liability company may be organized under this chapter for any 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.

### **322B.105 ORGANIZERS.**

One or more natural persons of at least 18 years of age may act as organizers of a limited liability company by filing with the secretary of state articles of organization for the limited liability company.

### **322B.11 MEMBER REQUIREMENT.**

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

### **322B.115 ARTICLES OF ORGANIZATION.**

Subdivision 1. **Required provisions.** The articles of organization must contain:

(1) the name of the limited liability company;

(2) the address of the registered office of the limited liability company and the name of its registered agent, if any, at that address;

(3) the name and address of each organizer; and

(4) a statement of the period of existence for the limited liability company if different from the period set forth in section 322B.20, subdivision 2.

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Subd. 2. **Statutory provisions that may be modified only in articles of organization or a member control agreement.** The following provisions govern a limited liability company unless modified in the articles of organization or a member control agreement under section 322B.37:

- (1) a limited liability company has general business purposes (section 322B.10);
- (2) a limited liability company has certain powers (section 322B.20);
- (3) the power to adopt, amend, or repeal the bylaws is vested in the board of governors (section 322B.603);
- (4) a limited liability company must allow cumulative voting for governors (section 322B.63, subdivision 2);
- (5) the affirmative vote of a majority of governors present is required for an action of the board of governors (section 322B.653);
- (6) a written action by the board of governors taken without a meeting must be signed by all governors (section 322B.656);
- (7) the board may accept contributions, make contribution agreements, and make contribution allowance agreements (sections 322B.40, subdivision 1; 322B.42; and 322B.43);
- (8) all membership interests are ordinary membership interests entitled to vote and are of one class with no series (section 322B.40, subdivision 5, clauses (1) and (2));
- (9) all membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors (section 322B.40, subdivision 5, clause (2));
- (10) the value of previous contributions is to be restated when a new contribution is accepted (section 322B.41);
- (11) a member has certain preemptive rights, unless otherwise provided by the board of governors (section 322B.33);
- (12) the affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a plurality of the votes cast (section 322B.63, subdivision 1) or a majority of the voting power of all membership interests entitled to vote (section 322B.35, subdivision 1);
- (13) the voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members (section 322B.356);
- (14) members share in distributions in proportion to the value reflected in the required records of the contributions of members (section 322B.50);
- (15) members share profits and losses in proportion to the value reflected in the required records of the contributions of members (section 322B.326);
- (16) a written action by the members taken without a meeting must be signed by all members (section 322B.35);
- (17) members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind (section 322B.52);
- (18) a member is not subject to expulsion (section 322B.306, subdivision 2);
- (19) unanimous consent is required for the transfer of governance rights to a person not already a member (section 322B.313, subdivision 2);
- (20) for limited liability companies whose existence begins before August 1, 1999, unanimous consent is required to avoid dissolution (section 322B.80, subdivision 1, clause (5)(i));
- (21) the termination of a person's membership interest has specified consequences (section 322B.306); and
- (22) restrictions apply to the assignment of governance rights (section 322B.313).

Subd. 3. **Statutory provisions that may be modified either in articles of organization, a member control agreement, or in the bylaws.** The following provisions govern a limited liability company unless modified in the articles of organization, a member control agreement under section 322B.37 or in the bylaws:

- (1) governors serve for an indefinite term that expires at the next regular meeting of members (section 322B.616);
- (2) the compensation of governors is fixed by the board of governors (section 322B.623);
- (3) a certain method must be used for removal of governors (section 322B.636);
- (4) a certain method must be used for filling board of governor vacancies (section 322B.64);
- (5) if the board of governors fails to select a place for a board meeting, it must be held at the principal executive office (section 322B.643, subdivision 1);
- (6) the notice of a board of governors meeting need not state the purpose of the meeting (section 322B.643, subdivision 3);
- (7) a majority of the board of governors is a quorum for a board meeting (section 322B.65);

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(8) a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present (section 322B.66, 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 the subcommittee any or all of the authority of the committee (section 322B.66, subdivision 3);

(9) the board may establish a special litigation committee (section 322B.66);

(10) the chief manager and treasurer have specified duties, until the board of governors determines otherwise (section 322B.673);

(11) managers may delegate some or all of their duties and powers, if not prohibited by the board of governors from doing so (section 322B.689);

(12) regular meetings of members need not be held, unless demanded by a member under certain conditions (section 322B.333);

(13) 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 members (section 322B.34, subdivision 2);

(14) for a quorum at a members' meeting there is required a majority of the voting power of the membership interests entitled to vote at the meeting (section 322B.353);

(15) the board of governors may fix a date up to 60 days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting (section 322B.356, subdivision 1);

(16) indemnification of certain persons is required (section 322B.699);

(17) the board of governors may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement (section 322B.54, subdivision 1); and

(18) members have no right to interim distributions except as provided through the bylaws or an act of the board of governors (section 322B.51).

**Subd. 4. Optional provisions and specific subjects.** The provisions in clauses (1), (7), (15), (16), and (18) may be included in the articles of organization or a member control agreement under section 322B.37.

The provisions in clauses (2) to (6), (8) to (14), and (17) may be included in the articles of organization, a member control agreement under section 322B.37 or the bylaws:

(1) the persons to serve as the first board of governors may be named in the articles of organization (section 322B.606, subdivision 1);

(2) a manner for increasing or decreasing the number of governors may be provided (section 322B.61);

(3) additional qualifications for governors may be imposed (section 322B.613);

(4) governors may be classified (section 322B.626);

(5) the day or date, time, and place of board of governors meetings may be fixed (section 322B.643, subdivision 1);

(6) absent governors may be permitted to give written consent or opposition to a proposal (section 322B.646);

(7) a larger than majority vote may be required for board of governor action (section 322B.653);

(8) authority to sign and deliver certain documents may be delegated to a manager or agent of the limited liability company other than the chief manager (section 322B.673, subdivision 2);

(9) additional managers may be designated (section 322B.676);

(10) additional powers, rights, duties, and responsibilities may be given to managers (section 322B.676);

(11) a method for filling vacant offices may be specified (section 322B.686, subdivision 3);

(12) the day or date, time, and place of regular member meetings may be fixed (section 322B.333, subdivision 3);

(13) certain persons may be authorized to call special meetings of members (section 322B.336, subdivision 1);

(14) notices of member meetings may be required to contain certain information (section 322B.34, subdivision 3);

(15) a larger than majority vote may be required for member action (section 322B.346);

(16) voting rights may be granted in or pursuant to the articles of organization to persons who are not members (section 322B.356, subdivision 3);

(17) limited liability company actions giving rise to dissenter rights may be designated (section 322B.386, subdivision 1, paragraph (e)); and

(18) a governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited.

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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.

Subd. 5. **Optional provisions generally.** The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.

Subd. 6. **Powers need not be stated.** It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

Subd. 7. **Dependence on facts outside the articles.** Except for provisions included pursuant to subdivision 1, any provision of the articles of organization may:

(1) be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and

(2) incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

### **322B.12 LIMITED LIABILITY COMPANY NAME.**

Subdivision 1. **Requirements and prohibitions.** The limited liability company name must:

(1) be in the English language or in any other language expressed in English letters or characters;

(2) contain the words "limited liability company," or must contain the abbreviation "LLC" or, in the case of an organization formed pursuant to chapter 319B, must meet the requirements of section 319B.05 applicable to a limited liability company;

(3) not contain the word corporation or incorporated and must not contain the abbreviation of either or both of these words;

(4) not contain a word or phrase that indicates or implies that it is organized for a purpose other than a legal business purpose; and

(5) be distinguishable upon the records in the Office of the Secretary of State from the name of each domestic limited liability company, limited liability partnership, corporation, and limited partnership, whether profit or nonprofit, and each foreign limited liability company, limited liability partnership, corporation, and limited partnership on file, authorized or registered to do business in this state at the time of filing, whether profit or nonprofit, and each name the right to which is, at the time of organization, reserved as provided for in sections 5.35, 302A.117, 317A.117, 321.0109, 322B.125, or 333.001 to 333.54, unless there is filed with the articles of organization one of the following:

(i) the written consent of the domestic limited liability company, limited liability partnership, corporation, or limited partnership or the foreign limited liability company, limited liability partnership, corporation, or limited partnership authorized or registered to do business in this state or the holder of a reserved name or a name filed by or registered with the secretary of state under sections 333.001 to 333.54 having a name that is not distinguishable;

(ii) a certified copy of a final decree of a court in this state establishing the prior right of the applicant to the use of the name in this state; or

(iii) the applicant's affidavit that the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership with the name that is not distinguishable has been organized, incorporated, or on file in this state for at least three years prior to the affidavit, if it is a domestic limited liability company, corporation, or limited partnership, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign limited liability company, corporation, or limited partnership, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit, that the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the domestic or foreign limited liability company or domestic or foreign corporation or in care of the agent of the domestic or foreign limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, stating that the applicant intends to use a name that is not

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distinguishable and the notice has been returned to the applicant as undeliverable to the addressee of the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership with the name that is not distinguishable in the county in which is located the registered office of the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

Subd. 2. **Determination.** The secretary of state shall determine whether a name is "distinguishable" from another name for purposes of this section and section 322B.125.

Subd. 3. **Other laws affecting use of names.** This section and section 322B.125 do not abrogate or limit the law of unfair competition or unfair practices, or sections 333.001 to 333.54, or the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, or derogate the common law or the principles of equity.

Subd. 4. **Use of a name by a surviving or successor organization.** A limited liability company that is the surviving organization in a merger with one or more other organizations, or that is organized by the reorganization of one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may have the same name as that used in this state by any of the other organizations, if the other organization whose name is sought to be used was organized under the laws of, or is authorized to transact business in, this state.

Subd. 5. **Injunction.** The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence, but a court in this state may, upon application of the state or of a person interested or affected, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.

### **322B.125 RESERVED NAME.**

Subdivision 1. **Who may reserve.** The exclusive right to the use of a limited liability company name otherwise permitted by section 322B.12 may be reserved by:

- (1) a person doing business in this state under that name;
- (2) a person intending to organize under this chapter;
- (3) a domestic limited liability company intending to change its name;
- (4) a foreign limited liability company intending to make application for a certificate of authority to transact business in this state;
- (5) a foreign limited liability company authorized to transact business in this state and intending to change its name;
- (6) a person intending to organize a foreign limited liability company and intending to have the foreign limited liability company make application for a certificate of authority to transact business in this state; or
- (7) a foreign limited liability company doing business under that name or a name not distinguishable from that name in one or more states other than this state and not described in clause (4), (5), or (6).

Subd. 2. **Method of reservation.** The reservation is made by filing with the secretary of state a request that the name be reserved. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods.

Subd. 3. **Transfer of reservation.** The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on



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behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee.

### **322B.13 REGISTERED OFFICE AND AGENT.**

Every limited liability company shall have a registered office and may have a registered agent, in the manner prescribed by section 5.36.

### **322B.135 CHANGE OF REGISTERED OFFICE OR AGENT.**

Every limited liability company may change its registered office or change its registered agent, and the agent may resign or change its business address or name, in the manner prescribed by section 5.36.

### **322B.14 AMENDMENT OF ARTICLES OF ORGANIZATION.**

The articles of organization of a limited liability company may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each organizer may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 322B.14 to 322B.16. An amendment that merely restates the then existing articles of organization, as amended, is not an amendment for the purposes of section 322B.63, subdivision 2, or 322B.33, subdivision 9.

### **322B.145 PROCEDURE FOR AMENDMENT BEFORE CONTRIBUTION.**

Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended pursuant to section 322B.60 by the organizers or by the board of governors. The articles of organization may also be amended by the board of governors to change or cancel a statement pursuant to section 322B.40, subdivision 6, establishing or fixing the rights and preferences of a class or series of membership interests before any contribution pertaining to that class or series is reflected in the required records of the limited liability company by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state.

### **322B.15 PROCEDURE FOR AMENDMENT AFTER CONTRIBUTION.**

Subdivision 1. **Manner of amendment.** Except as otherwise set forth in section 322B.145, after any contribution has been reflected in the required records of a limited liability company, the articles of organization may be amended in the manner set forth in this section.

Subd. 2. **Submission to members.** A resolution approved by the affirmative vote of a majority of the governors present, or proposed by a member or members owning three percent or more of the voting power of the members entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the members of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the members and voted upon at one meeting, but the same or substantially the same amendment proposed by a member or members need not be submitted to the members or be voted upon at more than one meeting during a 15-month period. The resolution may amend the articles of organization in their entirety to restate and supersede the original articles of organization and all amendments to them.

Subd. 3. **Notice.** Written notice of the members' meeting setting forth the substance of the proposed amendment must be given to each member entitled to vote in the manner provided in section 322B.34 for the giving of notice of meetings of members.

Subd. 4. **Approval by members.** (a) The proposed amendment is adopted when approved by the affirmative vote of the members required by section 322B.346, except as provided in paragraphs (b) and (c), and subdivision 5.

(b) For a closely held limited liability company, if the articles of organization provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles of organization is the larger of:

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(1) the specified proportion or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

(2) the specified proportion that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

(c) For limited liability companies other than closely held limited liability companies, if the articles provide for a larger proportion to transact a specified type of business at a meeting, the affirmative vote of that larger proportion is necessary to amend the articles to decrease the proportion necessary to transact the business.

Subd. 5. **Certain restatements.** An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board of governors and may, but need not, be submitted to and approved by the members as provided in subdivisions 2, 3, and 4.

Subd. 6. **Change of limited liability company name.** An amendment that only changes a limited liability company's limited liability company name may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in subdivisions 2, 3, and 4.

### **322B.155 CLASS OR SERIES VOTING ON AMENDMENTS.**

The owners of the outstanding membership interests of a class or series are entitled to vote as a class or series upon a proposed amendment to the articles of organization, whether or not entitled to vote on the amendment by the provisions of the articles of organization, if the amendment would:

(1) effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series, or effect a combination of outstanding membership interests of a class or series into a lesser number of membership interests of the class or series where each other class or series is not subject to a similar combination;

(2) effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;

(3) change the rights or preferences of the membership interests of the class or series;

(4) create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;

(5) divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board of governors to do so;

(6) limit or deny any existing preemptive rights of the membership interests of the class or series; or

(7) cancel or otherwise affect distributions on the membership interests of the class or series.

### **322B.16 ARTICLES OF AMENDMENT.**

When an amendment has been adopted, articles of amendment must be prepared that contain:

(1) the name of the limited liability company;

(2) the amendment adopted;

(3) with respect to an amendment restating the articles, a statement that the amendment restating the articles of organization correctly sets forth without change the corresponding provisions of the articles as previously amended if the amendment was approved only by the board;

(4) if the amendment provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of membership interests, a statement of the manner in which it will be effected; and

(5) a statement that the amendment has been adopted pursuant to this chapter.

### **322B.165 EFFECT OF AMENDMENT.**

Subdivision 1. **Effect on cause of action.** An amendment does not affect an existing cause of action in favor of or against the limited liability company, nor a pending suit to which the limited liability company is a party, nor the existing rights of persons other than members.

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Subd. 2. **Effect of change of name.** If the limited liability company name is changed by the amendment, a suit brought by or against the limited liability company under its former name does not abate for that reason.

Subd. 3. **Effect of amendments restating articles.** When effective under section 322B.175, an amendment restating the articles of organization in their entirety supersedes the original articles of organization and all amendments to the original articles of organization.

#### **322B.17 FILING OF ARTICLES OF ORGANIZATION.**

Articles of organization and articles of amendment must be filed with the secretary of state.

#### **322B.175 EFFECTIVE DATE OF ARTICLES OF ORGANIZATION.**

Articles of organization are effective and limited liability company existence begins when the articles of organization are filed with the secretary of state accompanied by a payment of \$135, which includes a \$100 organization fee in addition to the \$35 filing fee required by section 322B.03, subdivision 18. Articles of amendment are effective when filed with the secretary of state or at another time within 30 days after filing if the articles of amendment so provide. Articles of merger must be accompanied by a fee of \$60, which includes a \$25 merger fee in addition to the \$35 filing fee required by section 322B.03, subdivision 18.

#### **322B.18 PRESUMPTION AND CERTIFICATE OF ORGANIZATION.**

When the articles of organization have been filed with the secretary of state and the required fee has been paid to the secretary of state, it is presumed that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been organized, and the secretary of state shall issue a certificate of organization to the limited liability company. This presumption does not apply against this state in a proceeding to cancel or revoke the certificate of organization or to compel the involuntary dissolution of the limited liability company.

#### **322B.20 POWERS.**

Subdivision 1. **Generally and limitations.** A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization. The articles may not limit the powers stated in subdivision 3. A member control agreement may limit the powers stated in subdivisions 4 to 24.

Subd. 2. **Duration.** (a) A limited liability company whose existence begins before August 1, 1999, has a limited duration of 30 years from the date the articles of organization are filed with the secretary of state, unless the articles of organization state a shorter or longer period of duration, which may be perpetual.

(b) A limited liability company whose existence begins on or after August 1, 1999, has perpetual duration.

Subd. 3. **Legal capacity.** A limited liability company may sue and be sued, and complain, defend, and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its limited liability company name.

Subd. 4. **Property ownership.** A limited liability company may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest in property, wherever situated.

Subd. 5. **Property disposition.** A limited liability company may sell, convey, mortgage, create a security interest in, otherwise encumber, assign, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.

Subd. 6. **Trading in securities and obligations.** A limited liability company may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality of a government.

Subd. 7. **Contracts and mortgages.** A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or creation of a security interest in or other encumbrance or assignment of all or any of its property, franchises, and income.

Subd. 8. **Investment.** A limited liability company may invest and reinvest its funds.

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Subd. 9. **Holding property as security.** A limited liability company may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the limited liability company, as security for the payment of money loaned, advanced, or invested.

Subd. 10. **Location.** A limited liability company may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

Subd. 11. **Donations.** A limited liability company may make donations, irrespective of limited liability company benefit, for: (1) the public welfare; (2) social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes; and for similar or related purposes; (3) for the purpose of fostering national or international amateur sports competition; and (4) the prevention of cruelty to children and animals.

Subd. 12. **Pensions and benefits.** A limited liability company may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the limited liability company, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

Subd. 13. **Participating in management.** A limited liability company may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating limited liability company would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

Subd. 14. **Insurance.** A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of any or all of its members, managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.

Subd. 15. **Limited liability company seal.** A limited liability company may have, alter at its pleasure, and use a limited liability company seal as provided in section 322B.21.

Subd. 16. **Bylaws.** A limited liability company may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the limited liability company as provided in section 322B.603.

Subd. 17. **Committees.** A limited liability company may establish committees of the board of governors, elect or appoint persons to the committees, and define their duties as provided in section 322B.66 and fix their compensation.

Subd. 18. **Managers, employees, and agents.** A limited liability company may elect or appoint managers, employees and agents of the limited liability company, and define their duties as provided in sections 322B.67 to 322B.69, and fix their compensation.

Subd. 19. **Contributions.** A limited liability company may accept contributions under section 322B.40 and may enter into contribution agreements under section 322B.42 and contribution allowance agreements under section 322B.43.

Subd. 20. **Loans, guaranties, and sureties.** A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 322B.693.

Subd. 21. **Advances.** A limited liability company may make advances to members who provide services to the limited liability company, its governors, managers, and employees and those of its subsidiaries as provided in section 322B.696.

Subd. 22. **Indemnification.** A limited liability company shall indemnify those persons identified in section 322B.699 against certain expenses and liabilities only as provided in section 322B.699 and may indemnify other persons.

Subd. 23. **Assumed names.** A limited liability company may conduct all or part of its business under one or more assumed names as provided in sections 333.001 to 333.06.

Subd. 24. **Other powers.** A limited liability company may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the limited liability company is organized.

### **322B.21 LIMITED LIABILITY COMPANY SEAL.**

Subdivision 1. **Seal not required.** A limited liability company may, but need not, have a limited liability company seal, and the use or nonuse of a limited liability company seal does not affect the validity, recordability, or enforceability of a document or act. If a limited liability

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company has a limited liability company seal, the use of the seal by the limited liability company on a document is not necessary.

Subd. 2. **Required words and use.** If a limited liability company has a limited liability company seal, the seal may consist of a mechanical imprinting device, or a rubber stamp with a facsimile of the seal affixed on it, or a facsimile or reproduction of either. The seal need include only the word "Seal," but it may also include a part or all of the name of the limited liability company and a combination, derivation, or abbreviation of either or both of the phrases "a Minnesota Limited Liability Company" and "Limited Liability Company Seal." If a limited liability company seal is used, it or a facsimile of it may be affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on any document.

### **322B.22 EFFECT OF LACK OF POWER AND ULTRA VIRES.**

The doing, continuing, or performing by a limited liability company of an act, or an executed or wholly or partially executory contract, conveyance or transfer to or by the limited liability company, if otherwise lawful, is not invalid because the limited liability company was without the power to do, continue, or perform the act, contract, conveyance, or transfer, unless the lack of power is established in a court in this state:

(1) in a proceeding by a member against the limited liability company to enjoin the doing, continuing, or performing of the act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or to be, performed or made pursuant to a contract to which the limited liability company is a party, the court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and in so doing may allow to the limited liability company or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the court in setting aside and enjoining the performance of the contract;

(2) in a proceeding by or in the name of the limited liability company, whether acting directly or through a legal representative, or through members in a representative or derivative suit, against the incumbent or former managers or governors of the limited liability company for exceeding or otherwise violating their authority, or against a person having actual knowledge of the lack of power; or

(3) in a proceeding by the attorney general, as provided in section 322B.843, to dissolve the limited liability company, or in a proceeding by the attorney general to enjoin the limited liability company from the transaction of unauthorized business.

### **322B.23 TRANSACTION OF BUSINESS OUTSIDE MINNESOTA.**

By enacting this chapter the Minnesota legislature recognizes the limited liability company as an important and constructive form of business organization. The legislature understands that:

(1) businesses organized under or governed by this chapter will often transact business in other states;

(2) for businesses organized under or governed by this chapter to function effectively and for this chapter to be a useful enactment, this chapter must be accorded the same comity and full faith and credit that states typically accord to each other's corporate laws; and

(3) specifically, it is essential that other states recognize both the legal existence of limited liability companies organized under or governed by this chapter and the legal status of all members of these limited liability companies.

The legislature therefore specifically seeks that, subject to any reasonable registration requirements, other states extend to this chapter the same full faith and credit under section 1 of Article IV of the Constitution of the United States, and the same comity, that Minnesota extends to statutes that other states enact to provide for the establishment and operation of business organizations.

### **322B.30 NATURE OF A MEMBERSHIP INTEREST AND STATEMENT OF INTEREST OWNED.**

Subdivision 1. **Generally.** A membership interest is personal property. A member has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.

Subd. 2. **Statement of membership interest.** At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement. The statement must describe the member's rights to vote, if any, to share in profits and losses, and to share in distributions,

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restrictions on assignments of financial rights under section 322B.31, subdivision 3, or governance rights under section 322B.313, subdivision 6, then in effect, as well as any assignment of the member's rights then in effect other than a security interest.

Subd. 3. **Grant of a security interest.** For the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each to be characterized as provided in section 336.8-103, paragraph (c).

### **322B.303 PERSONAL LIABILITY OF MEMBERS AS MEMBERS.**

Subdivision 1. **Limited liability rule.** Subject to subdivision 2, a member, governor, manager, or other agent of a limited liability company is not, merely on account of this status, personally liable for the acts, debts, liabilities, or obligations of the limited liability company.

Subd. 2. **Piercing the veil.** The case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under Minnesota law also applies to limited liability companies.

Subd. 3. **Limited liability after dissolution.** The limited liability described in subdivisions 1 and 2 continues in full force regardless of any dissolution, winding up, and termination of a limited liability company.

### **322B.306 TERMINATION OF A MEMBERSHIP INTEREST.**

Subdivision 1. **Termination defined; member's power to terminate.** The continued membership of a member in a limited liability company is terminated by:

- (i) the member's death;
- (ii) the member's retirement;
- (iii) the member's resignation;
- (iv) redemption of the member's complete membership interest;
- (v) an assignment of the member's governance rights under section 322B.313 which leaves the assignor with no governance rights;
- (vi) a buyout of a member's membership interest under section 322B.833 that leaves that member with no governance rights;
- (vii) the member's expulsion;
- (viii) the member's bankruptcy;
- (ix) the dissolution of a member that is an organization;
- (x) a merger in which the limited liability company is not the surviving organization; or
- (xi) the occurrence of any other event that terminates the continued membership of a member in the limited liability company.

A member always has the power, though not necessarily the right, to terminate its membership by resigning or retiring at any time.

Subd. 2. **When expulsion permitted.** Unless otherwise provided in the articles of organization or a member control agreement, a member may not be expelled.

Subd. 3. **Effect of termination of membership on the rights of the terminated member.** If for any reason the continued membership of a member is terminated, then subject to the articles of organization and any member control agreement:

- (1) if the termination does not result in the dissolution of the limited liability company, the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; and
- (2) if the termination results in the dissolution of the limited liability company, the member whose continued membership has terminated retains all governance rights and financial rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.

Subd. 4. **Additional effects if termination of membership is wrongful.** If a member resigns or retires in contravention of the articles of organization or a member control agreement, the member who has wrongfully resigned or retired is liable to the limited liability company to the extent damaged by the wrongful resignation or retirement.

### **322B.31 ASSIGNMENT OF FINANCIAL RIGHTS.**

Subdivision 1. **Assignment of financial rights permitted.** Except as provided in subdivision 3, a member's financial rights are transferable in whole or in part.

Subd. 2. **Effect of assignment of financial rights.** An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a

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member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the limited liability company, or to cause dissolution.

**Subd. 3. Restrictions of assignment of financial rights.** (a) A restriction on the assignment of financial rights may be imposed in the articles, in a member control agreement, in the bylaws, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the limited liability company. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.

(b) Subject to paragraph (c), a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

(c) With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the limited liability company under section 322B.30. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.

(d) Notwithstanding any provision of law, articles of organization, member control agreement, bylaws, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with chapter 336, without the consent or approval of the member whose financial rights are subject to the security interest.

### **322B.313 ASSIGNMENT OF GOVERNANCE RIGHTS.**

**Subdivision 1. Transfer of governance rights restricted.** A member's governance rights are assignable, in whole or in part, only as provided in this section.

**Subd. 2. When unanimous consent required.** Subject to subdivision 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Except as otherwise set forth in the articles of organization or a member control agreement, any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent.

**Subd. 3. Effect on membership.** When an assignment of governance rights is effective under subdivision 2:

(1) if the assignment is not a security interest, the assignee becomes a member, if not already a member; and

(2) if the assignor does not retain any governance rights, the assignor ceases to be a member.

**Subd. 4. Effect on liability for contributions and illegal distributions.** When an assignment other than a security interest is effective under subdivision 2, unless the written consent under subdivision 2 otherwise provides:

(1) the assignee is liable in proportion to the interest assigned for the obligations of the assignor under sections 322B.40 (including liability for unperformed promises that have been reflected as contributions in the required records) and 322B.55 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and

(2) the assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 322B.40 and 322B.55.

**Subd. 5. Consequences of ineffective assignment.** If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subdivision 2:

(1) the purported or attempted assignment is ineffective in its entirety; and

(2) any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.

**Subd. 6. Restrictions on assignment of governance rights.** Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in section 322B.31, subdivision 3, for restricting the transfer of financial rights.

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Subd. 7. **Security interest.** Subject to subdivision 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by subdivision 2. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by subdivision 2. If a secured party has a security interest in both member's financial rights and governance rights, including a security interest in a complete membership interest, this subdivision's requirement that the secured party obtain the consents required by subdivision 2 applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights. Notwithstanding any provision of law, articles of organization, member control agreement, bylaws, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with chapter 336, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

### **322B.316 EFFECTIVE DATE OF ASSIGNMENTS.**

Any permissible and otherwise valid assignment of financial rights under section 322B.31 or of governance rights or a complete membership interest under section 322B.313 will be effective as to and binding on the limited liability company only when the assignee's name, address, and the nature and extent of the assignment are reflected in the required records of the limited liability company, except that a permissible and otherwise valid security interest in a complete membership interest, financial rights, or governance rights will be effective as to and binding on the limited liability company as provided in chapter 336 whether or not the information about the secured party or the permissible and otherwise valid security interest is reflected in the required records of the limited liability company.

### **322B.32 RIGHTS OF JUDGMENT CREDITOR.**

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 322B.31. This chapter does not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

### **322B.323 POWERS OF ESTATE OF A DECEASED OR INCOMPETENT MEMBER.**

Subdivision 1. **General rule.** If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the bankruptcy code is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. If a member is a corporation, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor.

Subd. 2. **When membership is terminated.** If an event referred to in subdivision 1 causes the termination of a member's membership interest and the termination does not result in dissolution, then subject to the articles of organization and any member control agreement:

(1) as provided in section 322B.306, subdivision 3, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and

(2) the rights to be exercised by the legal representative of the terminated member will be limited accordingly.

### **322B.326 SHARING OF PROFITS AND LOSSES.**

Unless otherwise provided in the articles of organization, a member control agreement, or by the board of governors under section 322B.40, subdivisions 5 and 6, the profits and losses of a limited liability company are to be allocated among the members, and among classes and



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series of members, in proportion to the value of the contributions of the members reflected in the required records.

**322B.33 PREEMPTIVE RIGHTS.**

Subdivision 1. **Presumption and modification.** Unless denied or limited in the articles of organization, a member control agreement, or by the board of governors pursuant to section 322B.40, subdivision 5, clause (2), a member of a limited liability company has the preemptive rights provided in this section.

Subd. 2. **Definition.** A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the limited liability company may accept new contributions from other persons or to make contribution allowance agreements with other persons.

Subd. 3. **When right accrues.** A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.

Subd. 4. **Exemptions.** Unless otherwise provided in the articles of organization or a member control agreement, no preemptive rights according to this section arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:

- (1) to be made in a form other than money;
- (2) to be made or reflected pursuant to a plan of merger or exchange;
- (3) to be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;
- (4) to be made pursuant to a previously made contribution allowance agreement; or
- (5) to be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

Subd. 5. **Extent of preemptive right.** The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.

Subd. 6. **Waiver.** A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.

Subd. 7. **Notice.** When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board of governors shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:

- (1) the extent of the member's preemptive right, being:
  - (i) in the case of a preemptive right to make a contribution, the amount of the contribution to be made, and
  - (ii) in the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;
- (2) the method used to determine the extent of the member's preemptive right;
- (3) the terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and
- (4) the time within which and the method by which the member must exercise the right.

Subd. 8. **Contribution and participation by others.** If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board of governors for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board of governors may accept contributions or make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.

Subd. 9. **Modification.** If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization that has the effect of denying, limiting, or modifying the preemptive rights provided in this section

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shall be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

Subd. 10. **Contractual rights.** A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a limited liability company to grant first refusal rights, contribution allowance rights, or other rights to make contributions to the limited liability company to members, persons who have entered into contribution agreements, or other persons before accepting contributions or making contribution allowance agreements with any other person.

### **322B.333 REGULAR MEETINGS OF MEMBERS.**

Subdivision 1. **Frequency.** Regular meetings of members may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles of organization, a member control agreement, or bylaws or by subdivision 2.

Subd. 2. **Demand by member.** If a regular meeting of members has not been held during the immediately preceding 15 months, a member or members owning three percent or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the chief manager or the treasurer of the limited liability company. Within 30 days after receipt of the demand by one of those managers, the board of governors shall cause a regular meeting of members to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the limited liability company. If the board of governors fails to cause a regular meeting to be called and held as required by this subdivision, the member or members making the demand may call the regular meeting by giving notice as required by section 322B.34, all at the expense of the limited liability company.

Subd. 3. **Time and place.** A regular meeting, if any, must be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles, a member control agreement, or bylaws, except that a meeting called by or at the demand of a member pursuant to subdivision 2 must be held in the county where the principal executive office of the limited liability company is located. To the extent authorized in the articles, a member control agreement, or the bylaws, the board of governors may determine that a regular meeting of the members shall be held solely by means of remote communication in accordance with section 322B.343, subdivision 2.

Subd. 4. **Elections required and other business.** At each regular meeting of members there must be an election of qualified successors for governors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the members may be transacted at a regular meeting.

### **322B.336 SPECIAL MEETINGS OF MEMBERS.**

Subdivision 1. **Who may call.** Special meetings of the members may be called for any purpose or purposes at any time, by:

- (1) the chief manager;
- (2) the treasurer;
- (3) two or more governors;
- (4) a person authorized in the articles, a member control agreement, or bylaws to call special meetings; or
- (5) a member or members owning ten percent or more of the voting power of all membership interests entitled to vote.

Subd. 2. **Demand by members.** A member or members owning the voting power specified in subdivision 1, clause (5), may demand a special meeting of members by written notice of demand given to the chief manager or treasurer of the limited liability company and containing the purposes of the meeting. Within 30 days after receipt of the demand by one of those managers, the board of governors shall cause a special meeting of members to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the limited liability company. If the board of governors fails to cause a special meeting to be called and held as required by this subdivision, the member or members making the demand may call the meeting by giving notice as required by section 322B.34, all at the expense of the limited liability company.

Subd. 3. **Time and place.** Special meetings must be held on the date and at the time and place fixed by the chief manager, the treasurer, the board of governors, or a person authorized by the articles, a member control agreement, or bylaws to call a meeting, except that a special meeting called by or at the demand of a member or members pursuant to subdivision 2 must be held in the county where the principal executive office is located. To the extent authorized in the

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articles, a member control agreement, or the bylaws, the board of governors may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with section 322B.343, subdivision 2.

Subd. 4. **Business limited.** The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the limited liability company, unless all of the members have waived notice of the meeting in accordance with section 322B.34, subdivision 4.

### 322B.34 NOTICE.

Subdivision 1. **To whom given.** Except as otherwise provided in this chapter, notice of all meetings of members must be given to every owner of membership interests entitled to vote, unless:

(1) the meeting is an adjourned meeting to be held not more than 120 days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or

(2) the following have been mailed by first class mail to a member at the address in the limited liability company records and returned undeliverable:

(i) two consecutive regular meeting notices and notice of any special meetings held during the period between the two regular meetings; and

(ii) all payment of distributions sent during a 12-month period, provided there are at least two sent during the 12-month period.

If notice of an adjourned meeting is required under clause (1), then the date for determination of members entitled to notice of, and entitled to vote at, the adjourned meeting must comply with section 322B.356, subdivision 1, except that if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.

An action or meeting that is taken or held without notice under clause (2) has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the limited liability company, the notice requirement is reinstated.

Subd. 2. **When given.** In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization, a member control agreement, or bylaws, and not more than 60 days before the date of the meeting.

Subd. 3. **Contents.** The notice must contain the date, time, and place of the meeting, the information with respect to dissenters' rights required by section 322B.386, subdivision 2, if applicable, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles of organization, a member control agreement, or bylaws or considered necessary or desirable by the board of governors or by any other person or persons calling the meeting.

Subd. 4. **Waiver and objections.** A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

### 322B.343 REMOTE COMMUNICATIONS FOR MEMBER MEETINGS.

Subdivision 1. **Construction and application.** This section shall be construed and applied to:

(1) facilitate remote communication consistent with other applicable law; and

(2) be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

Subd. 2. **Member meetings held solely by means of remote communication.** To the extent authorized in the articles, a member control agreement, or the bylaws, and determined by the board of governors, a regular or special meeting of members may be held solely by any combination of means of remote communication through which the members may participate in the meeting, if notice of the meeting is given to every owner of membership interests entitled to

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vote as would be required by this chapter for a meeting, and if the membership interests held by the members participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

Subd. 3. **Participation in member meetings by means of remote communication.** To the extent authorized in the articles, a member control agreement, or the bylaws, and determined by the board of governors, a member not physically present in person or by proxy at a regular or special meeting of members may, by means of remote communication, participate in a meeting of members held at a designated place. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

Subd. 4. **Requirements for meetings held solely by means of remote communication and for participation by means of remote communication.** In any meeting of members held solely by means of remote communication under subdivision 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subdivision 3:

(1) the limited liability company shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and

(2) the limited liability company shall implement reasonable measures to provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:

(i) read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(ii) if allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and

(iii) if otherwise entitled, vote on matters submitted to the members.

Subd. 5. **Notice to members.** (a) Any notice to members given by the limited liability company under any provision of this chapter, the articles, a member control agreement, or the bylaws by a form of electronic communication consented to by the member to whom the notice is given is effective when given. The notice is deemed given:

(1) if by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;

(2) if by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;

(3) if by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:

(i) the posting; and

(ii) the giving of the separate notice; and

(4) if by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.

An affidavit of the secretary, other authorized manager, or authorized agent of the limited liability company, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

(b) Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The limited liability company is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.

Subd. 6. **Revocation.** Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote, authorization, or consent so long as the revocation is received by a manager of the limited liability company at or before the meeting or before an action without a meeting is effective according to section 322B.656.

Subd. 7. **Waiver.** Waiver of notice by a member of a meeting by means of authenticated electronic communication may be given in the manner provided in section 322B.34, subdivision 4. Participation in a meeting by means of remote communication described in subdivisions 2 and 3 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or

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objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

### **322B.346 ACT OF MEMBERS.**

Subdivision 1. **Majority required.** Except for the election of governors, which is governed by section 322B.63, the members shall take action by the affirmative vote of the owners of the greater of: (1) a majority of the voting power of the membership interests present and entitled to vote on that item of business; or (2) a majority of the voting power that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles of organization, or a member control agreement, require a larger proportion. If the articles or a member control agreement require a larger proportion than is required by this chapter for a particular action, the articles or the member control agreement control.

Subd. 2. **Voting by class or series.** In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, a member control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests present of that class or series, or of the total outstanding membership interests of that class or series, as the proportion required pursuant to subdivision 1, unless the articles or the member control agreement require a larger proportion. Unless otherwise stated in the articles, a member control agreement, or bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 322B.353.

### **322B.348 CONTRACTUAL REQUIREMENT TO SUBMIT MATTER TO MEMBERS.**

A limited liability company may agree to submit a matter to its members whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that members reject it.

### **322B.35 ACTION WITHOUT A MEETING.**

Subdivision 1. **Method.** An action required or permitted to be taken at a meeting of the members may be taken by written action signed, or consented to by authenticated electronic communication, by all of the members. If the articles or a member control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present, but in no event may written action be taken by members holding less than a majority of the voting power of all membership interests entitled to vote on the action. After the adoption of the initial articles or the first making of a member control agreement, an amendment to the articles or to a member control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.

Subd. 2. **Effective time.** The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.

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

### **322B.353 QUORUM.**

The owners of a majority of the voting power of the membership interests entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion is provided in the articles, a member control agreement, or bylaws. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business

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until adjournment, even though the withdrawal of members originally present leaves less than the proportion otherwise required for a quorum.

### **322B.356 VOTING RIGHTS.**

Subdivision 1. **Determination.** The board of governors may fix, or authorize a manager to fix, a date not more than 60 days, or a shorter time period provided in the articles of organization, a member control agreement, or bylaws, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

Subd. 2. **Voting power.** Unless otherwise provided in the articles, a member control agreement, or by the board of governors under section 322B.40, subdivisions 5 and 6, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.

Subd. 3. **Nonmembers.** The articles of organization or a member control agreement may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this section.

Subd. 4. **Jointly owned membership interests.** Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from any one of them denying the authority of that person to vote those membership interests.

Subd. 5. **Manner of voting and presumption.** Except as provided in subdivision 4, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

### **322B.36 VOTING BY ORGANIZATIONS AND LEGAL REPRESENTATIVES.**

Subdivision 1. **Membership interests held by another organization.** Membership interests of a limited liability company reflected in the required records as being owned by another domestic or foreign organization may be voted by the chief manager, chief executive officer, or another legal representative of that organization.

Subd. 2. **Membership interests held by subsidiary.** Except as provided in subdivision 3, membership interests of a limited liability company reflected in the required records as being owned by a subsidiary are not entitled to be voted on any matter.

Subd. 3. **Membership interests controlled in a fiduciary capacity.** Membership interests of a limited liability company in the name of, or under the control of, the limited liability company or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to vote or gives the limited liability company or, with respect to membership interests in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the membership interests.

Subd. 4. **Voting by certain representatives.** Subject to section 322B.323, membership interests under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or the like may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.

Subd. 5. **Voting by trustee in bankruptcy or receiver.** Membership interests reflected in the required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required records the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed. The right to vote of trustees in bankruptcy and receivers is subject to section 322B.323.

Subd. 6. **Membership interests held by other organizations.** Membership interests reflected in the required records in the name of an organization not described in subdivisions 1 to 5 may be voted either in person or by proxy by the legal representative of that organization.

Subd. 7. **Grant of security interest.** The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote except as provided in section 322B.313.

### **322B.363 PROXIES.**

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Subdivision 1. **Authorization.** (a) A member may cast or authorize the casting of a vote by (1) filing a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective, or (2) telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the member, of an appointment of a proxy with the limited liability company or the limited liability company's duly authorized agent at or before the meeting at which the appointment is to be effective. The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment was authorized by the member. If it is reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination shall specify the information upon which they relied to make that determination. A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication according to section 322B.343, to the extent the member appointing the proxy would have been entitled to participate by remote communication according to section 322B.343, if the member did not appoint the proxy.

(b) A copy, facsimile, telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

(c) An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or consented to by authenticated electronic communication, by any one of them, unless the limited liability company receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

Subd. 2. **Duration.** The appointment of a proxy is valid for 11 months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the membership interests or the limited liability company.

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 a manager of the limited liability company, by filing a new written appointment of a proxy, signed by the member, with a manager of the limited liability company, or by telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the member, of a new appointment of a proxy with the limited liability company or the limited liability company's duly authorized agent. Termination in any such manner revokes all prior proxy appointments and is effective when filed with a manager of the limited liability company or when the telephonic transmission or authenticated electronic communication is received by the limited liability company or the limited liability company'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 member.

Subd. 4. **Revocation by death or incapacity.** The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by a manager of the limited liability company before the proxy exercises the authority under that appointment.

Subd. 5. **Multiple proxies.** Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:

(1) any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment; and

(2) if no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of business, the membership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, the membership interests must not be voted.

Subd. 6. **Vote of proxy accepted and liability.** Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the limited liability company may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

Subd. 7. **Limited authority.** If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present

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and entitled to vote by the proxy for purposes of section 322B.346, subdivision 1, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subdivision.

### **322B.366 MEMBER VOTING AGREEMENTS.**

Subdivision 1. **General rule.** A written agreement among persons who are then members or who have signed contribution agreements, relating to the voting of their membership interests, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 322B.363 regarding proxies.

### **322B.37 MEMBER CONTROL AGREEMENTS.**

Subdivision 1. **Authorization and scope.** A member control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided in subdivision 2 and enforceable as provided in subdivision 3. A member control agreement valid under subdivision 2 may relate to, without limitation, the management of the limited liability company's business, the declaration and payment of distributions, the sharing of profits and losses, the election of governors or managers, the employment of members and others by the limited liability company, the relations among members and persons who have signed contribution agreements (including the termination of continued membership), the dissolution, termination, and liquidation of the limited liability company (including the continuation of the limited liability company's business through a successor organization or individual), and the arbitration of disputes. Wherever this chapter provides that a particular result may or must be obtained through a provision in the articles of organization (other than a provision required by section 322B.115, subdivision 1, to be contained in the articles), in the bylaws, or by an act of the board, the same result can be accomplished through a member control agreement valid under this section or through a procedure established by a member control agreement valid under this section. A member control agreement may allocate to the members authority ordinarily exercised by the board of governors, allocate to the board of governors authority ordinarily exercised by the members, or structure the governance of the limited liability company in any agreed fashion and may waive, in whole or in part, a member's dissenting rights under sections 322B.383 and 322B.386.

Subd. 2. **Method of approval.** A member control agreement as described in subdivision 1 is valid if the agreement is in writing and is signed by the persons who, on the date the agreement first becomes effective, comprise all the members of the limited liability company (regardless of voting power), and all persons who are party to contribution agreements that on that date have not yet been fully performed (regardless of whether those parties will, when members, have voting power). A member control agreement may also include as parties persons who are neither members nor parties to a contribution agreement. A member control agreement may provide for its amendment through nonunanimous means.

Subd. 3. **Enforceability and copies.** (a) A member control agreement valid under subdivisions 1 and 2 is enforceable by persons who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the member control agreement. A copy of the member control agreement must be filed with the limited liability company. The limited liability company shall note in its required records that the members' interests are governed by a member control agreement entered into under this section.

(b) A member control agreement valid under subdivisions 1 and 2 is specifically enforceable.

(c) A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member control agreement from the limited liability company at the company's expense.

Subd. 4. **Liability.** If a member control agreement authorized under this section takes away from any person any of the authority and responsibility which that person would otherwise possess under this chapter, the effect of the member control agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.

Subd. 5. **Other agreements.** This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement



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among members or between the members and the limited liability company with respect to any of the matters described.

**322B.373 REQUIRED RECORDS AND INFORMATION.**

Subdivision 1. **Required records.** A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board of governors:

- (1) a current list of the full name and last known business, residence, or mailing address of each member, governor, and chief manager;
- (2) a current list of the full name and last known business, residence, or mailing address of each assignee of financial rights other than a secured party, and a description of the rights assigned;
- (3) a copy of the articles of organization and all amendments to the articles;
- (4) copies of any currently effective written bylaws;
- (5) copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (6) financial statements required by section 322B.376;
- (7) records of all proceedings of members for the last three years;
- (8) records of all proceedings of the board of governors for the last three years;
- (9) reports made to members generally within the last three years;
- (10) member control agreements described in section 322B.37;
- (11) a statement of all contributions accepted under section 322B.40, subdivision 3, including for each contribution:
  - (i) the identity of the member to whom the contribution relates;
  - (ii) the class or series to which the contribution pertains;
  - (iii) the amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;
  - (iv) a description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and
  - (v) the value accorded under section 322B.40, subdivision 4 to:
    - (A) any other property transferred or promised to be transferred to the limited liability company; and
    - (B) any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;
- (12) a statement of all contribution agreements made under section 322B.42, including for each contribution agreement:
  - (i) the identity of the would-be contributor;
  - (ii) the class or series to which the future contribution pertains; and
  - (iii) as to each future contribution to be made, the same information as subdivision 1, clause (11) requires for contributions already accepted;
- (13) a statement of all contribution allowance agreements made under section 322B.43, including for each contribution allowance agreement:
  - (i) the identity of the would-be contributor;
  - (ii) the class or series to which the future contribution would pertain; and
  - (iii) as to each future contribution allowed to be made, the same information as subdivision 1, clause (11) requires for contributions already accepted;
- (14) an explanation of any restatement of value made under section 322B.41;
- (15) any written consents obtained from members under this chapter;
- (16) a copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under section 322B.40, subdivision 6.

Subd. 2. **Right to inspect.** (a) A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all documents referred to in subdivision 1. If such documents are maintained at a place outside of this state, the limited liability company shall make such documents available at its registered office, at its principal executive office within this state, or at such other place as the limited liability company and the member may agree.

(b) A member of a limited liability company has a right, upon written demand, to examine and copy, in person or by a legal representative, other limited liability company records at any reasonable time only if the member demonstrates a proper purpose for the examination.

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(c) For purposes of this section, a "proper purpose" is one reasonably related to the person's interest as a member of the limited liability company.

**Subd. 3. Protective orders.** On application of the limited liability company, a court in this state may issue a protective order permitting the limited liability company to withhold portions of the records of proceedings of the board of governors for a reasonable period of time, not to exceed 12 months, in order to prevent premature disclosure of confidential information that would be likely to cause competitive injury to the limited liability company. A protective order may be renewed for successive reasonable periods of time, each not to exceed 12 months and in total not to exceed 36 months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action that the member might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the limited liability company, it shall award reasonable expenses, including attorney's fees and disbursements, to the member. This subdivision does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the limited liability company records that may be copied or examined under subdivision 2 or the use or distribution of the records by the demanding member.

**Subd. 4. Other use prohibited.** A member who has gained access under this section to any limited liability company record may not use or furnish to another for use the limited liability company record or a portion of the contents for any purpose other than a proper purpose. Upon application of the limited liability company, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subdivision.

**Subd. 5. Cost of copies.** Copies of the information referred to in subdivision 1 must be furnished at the expense of the limited liability company. In all other cases, the limited liability company may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

**Subd. 6. Computerized records.** The records maintained by a limited liability company may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or micro-images, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A limited liability company shall convert any of the records referred to in subdivision 2 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subdivision 5. A copy of the conversion is admissible in evidence, and is acceptable for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

### **322B.376 FINANCIAL STATEMENTS.**

(a) A limited liability company shall prepare annual financial statements within 180 days after the close of the limited liability company's fiscal year. The financial statements must include at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, prepared on the basis of accounting methods reasonable in the circumstances. The financial statements may be consolidated statements of the limited liability company and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy must be accompanied by a statement of the treasurer or other person in charge of the limited liability company's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

(b) Upon written request by a member, a limited liability company shall furnish its most recent annual financial statements as required under paragraph (a) no later than ten business days after receipt of a member's written request. "Furnish" for purposes of this paragraph means that the limited liability company shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting member.

### **322B.38 EQUITABLE REMEDIES.**

If a limited liability company or a manager or governor of the limited liability company violates a provision of this chapter, a court in this state may, in an action brought by a member of

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the limited liability company, grant any equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the member.

### **322B.383 RIGHTS OF DISSENTING MEMBERS.**

Subdivision 1. **Actions creating dissenters' rights.** Subject to a member control agreement under section 322B.37, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:

(1) unless otherwise provided in the articles, an amendment of the articles of organization, but not an amendment to a member control agreement, which materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

(i) alters or abolishes a preferential right of the membership interests;

(ii) creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;

(iii) alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

(iv) excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

(v) changes a member's right to resign or retire;

(vi) establishes or changes the conditions for or consequences of expulsion; or

(vii) eliminates the right to obtain payment under clause (1);

(2) a sale, lease, transfer, or other disposition of property and assets of the limited liability company that requires member approval under section 322B.77, subdivision 2, but not including a disposition in dissolution described in section 322B.813, subdivision 4, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;

(3) a plan of merger to which the limited liability company is a constituent organization;

(4) a plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan;

(5) a plan of conversion under section 302A.683; or

(6) any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member control agreement, the bylaws, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests.

Subd. 2. **Other rights.** The members of a limited liability company who have a right under this section to obtain payment for their membership interests do not have a right at law or in equity to have a limited liability company action described in subdivision 1 set aside or rescinded, except when the limited liability company action is fraudulent with regard to the complaining member or the limited liability company.

Subd. 3. **Rights not to apply.** If a date is fixed according to section 322B.356, subdivision 1, for the determination of members entitled to receive notice of and to vote on an action described in subdivision 1, only members as of the date fixed may exercise dissenters' rights.

### **322B.386 PROCEDURES FOR ASSERTING DISSENTERS' RIGHTS.**

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

(b) "Limited liability company" means a limited liability company whose members have obtained rights to dissent under section 322B.383, subdivision 1, and includes any successor by merger.

(c) "Fair value of the membership interests" means the value of the membership interests of a limited liability company immediately before the effective date of the limited liability company action referred to in section 322B.383, subdivision 1.

(d) "Interest" means interest beginning five days after the effective date of the limited liability company action referred to in section 322B.383, subdivision 1, up to and including

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the date of payment, calculated at the rate provided in section 549.09 for interest on verdicts and judgments.

(e) "Member" includes a former member when dissenters' rights exist because:

(1) the membership of that former member has terminated causing dissolution; and

(2) the dissolved limited liability company has then entered into a winding up merger under section 322B.81, subdivision 3.

Subd. 2. **Notice of action.** If a limited liability company calls a member meeting at which any action described in section 322B.383, subdivision 1, is to be voted upon, the notice of the meeting must inform each member of the right to dissent and must include a copy of section 322B.383 and this section and a brief description of the procedure to be followed under these sections. For members who have assigned some or all of their financial rights, the description must also include the procedures under subdivision 9.

Subd. 3. **Notice of dissent.** If the proposed action must be approved by the members and the limited liability company holds a meeting of members, a member who is entitled to dissent under section 322B.383 and who wishes to exercise dissenters' rights must file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and must not vote the membership interests in favor of the proposed action.

Subd. 4. **Notice of procedure.** (a) After the proposed action has been approved by the board of governors and, if necessary, the members, the limited liability company shall send to (i) all members who have complied with subdivision 3, (ii) all members who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 322B.383, and (iii) all members entitled to dissent if no member vote was required, a notice that contains:

(1) the address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;

(2) a form to be used to certify the date on which the member acquired the membership interests and to demand payment; and

(3) a copy of section 322B.383 and this section and a brief description of the procedures to be followed under these sections.

(b) In order to receive the fair value of the membership interests, a dissenting member must demand payment within 30 days after the notice required by paragraph (a) was given, but the dissenter retains all other rights of a member until the proposed action takes effect.

Subd. 5. **Payment.** (a) After the limited liability company action takes effect, or after the limited liability company receives a valid demand for payment, whichever is later, the limited liability company shall remit to each dissenting member who has complied with subdivisions 3 and 4 the amount the limited liability company estimates to be the fair value of the membership interests, plus interest, accompanied by:

(1) the limited liability company's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the effective date of the limited liability company action, together with the latest available interim financial statements;

(2) an estimate by the limited liability company of the fair value of the membership interests and a brief description of the method used to reach the estimate; and

(3) a copy of section 322B.383 and this section and a brief description of the procedure to be followed in demanding supplemental payment.

(b) The limited liability company may withhold the remittance described in paragraph (a) from a person who was not a member on the date the action dissented from was first announced to the public. If the dissenter has complied with subdivisions 3 and 4, the limited liability company shall forward to the dissenter the materials described in paragraph (a), a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subdivision 6. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subdivisions 7 and 8 apply.

Subd. 6. **Supplemental payment.** If a dissenter believes that the amount remitted under subdivision 5 is less than the fair value of the membership interests plus interest, the dissenter may give written notice to the limited liability company of the dissenter's own estimate of the fair value of the membership interests, plus interest, within 30 days after the limited liability company mails the remittance under subdivision 5, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the limited liability company.

Subd. 7. **Petition and determination.** If the limited liability company receives a demand under subdivision 6, it shall, within 60 days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the limited liability

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company or file in court a petition requesting that the court determine the fair value of the membership interests, plus interest. The petition must be filed in the county in which the registered office of the limited liability company is located, except that a surviving foreign corporation that receives a demand relating to the membership interests of a constituent limited liability company shall file the petition in the county in this state in which the last registered office of the constituent limited liability company was located. The petition must name as parties all dissenters who have demanded payment under subdivision 6 and who have not reached agreement with the limited liability company. The limited liability company shall, after filing the petition, serve all parties with a summons and copy of the petition under the Rules of Civil Procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the Rules of Civil Procedure apply to this proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court considers proper, to receive evidence on and recommend the amount of the fair value of the membership interests. The court shall determine whether the member or members in question have fully complied with the requirements of this section, and shall determine the fair value of the membership interests, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the limited liability company or by a dissenter. The fair value of the membership interests as determined by the court is binding on all members, wherever located. A dissenter is entitled to judgment in cash for the amount by which the fair value of the membership interests as determined by the court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but is not liable to the limited liability company for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the membership interests as determined by the court, plus interest.

**Subd. 8. Costs, fees and expenses.** (a) The court shall determine the costs and expenses of a proceeding under subdivision 7, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the limited liability company, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subdivision 6 is found to be arbitrary, vexatious, or not in good faith.

(b) If the court finds that the limited liability company has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court considers equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

(c) The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

**Subd. 9. Procedures as to assignees of financial rights.** When an assignment of some or all of the financial rights of a membership interest is in effect, then as to that membership interest the provisions of subdivisions 1 to 8 must be followed subject to the following revisions.

(a) All rights to be exercised and actions to be taken by a member under subdivisions 2 to 8 shall be taken by the member and not by any assignee of the member's financial rights. As between the limited liability company and the assignees, the actions taken or omitted by the member bind the assignees.

(b) Instead of remitting a payment under subdivision 5, paragraph (a), the limited liability company shall forward to the dissenter member:

- (i) the materials described in subdivision 5, paragraph (a);
- (ii) an offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and
- (iii) a statement of that allocation.

(c) If the dissenter member accepts the amount of the offer made under paragraph (b) but disputes the allocation, the dissenter shall promptly so notify the limited liability company and promptly after the notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the limited liability company is located, or in the case of a surviving foreign corporation that is complying with this section following a merger or an exchange with a constituent limited liability company the suit must be filed in the county in this state in which the last registered office of the constituent limited liability company was located. The suit must name as parties the member, the limited liability company and all assignees of the member's financial rights. Upon being served with the action, the limited liability company shall promptly pay into the court the amount offered under paragraph (b) and shall then be dismissed from the action.

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(d) If the dissenter considers the amount offered under paragraph (b) inadequate, the dissenter may decline the offer and demand payment under subdivision 6. If the dissenter makes demand, subdivisions 7 and 8 apply, with the court having jurisdiction also to determine the correctness of the allocation.

(e) If the member fails to take action under either paragraph (c) or (d), then:

(i) as to the limited liability company, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under paragraph (b); and

(ii) the limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under paragraph (b).

**322B.40 AUTHORIZATION, FORM AND ACCEPTANCE OF CONTRIBUTIONS.**

Subdivision 1. **Board of governors may authorize.** Subject to any restrictions in the articles of organization or a member control agreement and only when authorized by the board of governors or pursuant to a member control agreement, a limited liability company may accept contributions under subdivisions 2 and 3, make contribution agreements under section 322B.42, and make contribution allowance agreements under section 322B.43.

Subd. 2. **Permissible forms.** A person may make a contribution to a limited liability company:

(1) by paying money or transferring the ownership of an interest in property to the limited liability company, or rendering services to or for the benefit of the limited liability company; or

(2) through a written obligation signed by the person to pay money or transfer ownership of an interest in property to the limited liability company or to perform services to or for the benefit of the limited liability company.

Subd. 3. **Acceptance of contributions.** No purported contribution is to be treated or considered as a contribution, unless:

(1) the board of governors accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution, including terms of future performance, if any, and states the value being accorded to the contribution; and

(2) the fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.

Subd. 4. **Valuation.** The determinations of the board of governors as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 322B.42, and a contribution allowance agreement in section 322B.43, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subdivision, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subdivision.

Subd. 5. **Terms of membership interests.** All the membership interests of a limited liability company must:

(1) be of one class, without series, unless the articles of organization or a member control agreement establish, or authorize the board of governors to establish, more than one class or series within classes;

(2) be ordinary membership interests entitled to vote as provided in section 322B.356, and have equal rights and preferences in all matters not otherwise provided for by the board of governors unless and to the extent that the articles of organization or a member control agreement have fixed the relative rights and preferences of different classes and series; and

(3) share profits and losses as provided in section 322B.326, and be entitled to distributions as provided in sections 322B.50, 322B.51, and 322B.873, subdivision 1, clause (3).

Subd. 6. **Procedure for fixing terms.** (a) Subject to any restrictions in the articles of organization or a member control agreement, the power granted in subdivision 5 may be exercised by a resolution or resolutions establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles of organization, in a member control agreement, or by resolution of the board of governors:

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(1) may be made dependent upon facts ascertainable outside the articles of organization, or outside the resolution or resolutions establishing the class or series, if the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles of organization or in the resolution or resolutions establishing the class or series; and

(2) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company in connection with the establishment of the class or series if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(b) A statement setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization or a member control agreement. However, where the members have received notice of the creation of membership interests with rights or preferences not set forth in the articles of organization or a member control agreement before the acceptance of the contributions with respect to the membership interests, the statement may be filed any time within one year after the acceptance of contributions. The resolution is effective when the statement has been filed with the secretary of state; or, if it is not required to be filed with the secretary of state before the acceptance of contributions, on the date of its adoption by the governors.

(c) Filing a statement with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles of organization for purposes of sections 322B.15, 322B.155, and 322B.383. Filing an amendment of such a statement with the secretary of state is considered an amendment of the articles for purposes of sections 322B.15, 322B.155, and 322B.383.

Subd. 7. **Specific terms.** Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:

(1) subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board of governors;

(2) entitling the members to cumulative, partially cumulative, or noncumulative distributions;

(3) having preference over any class or series of membership interests for the payment of distributions of any or all kinds;

(4) convertible into membership interests of any other class or any series of the same or another class; or

(5) having full, partial, or no voting rights, except as provided in section 322B.155.

#### **322B.41 RESTATEMENT OF VALUE OF PREVIOUS CONTRIBUTIONS.**

Subdivision 1. **Definition.** As used in this section, an "old" contribution is a contribution reflected in the required records of a limited liability company before the time the limited liability company accepts a new contribution.

Subd. 2. **Restatement required.** Whenever a limited liability company accepts a new contribution, the board shall restate, as required by this section, the value of all old contributions.

Subd. 3. **Restatement as to the particular series or class to which the new contribution pertains.** Unless otherwise provided in the articles of organization or a member control agreement, this subdivision states the method of restating the value of old contributions that pertain to the same series or class to which the new contribution pertains:

(1) state the value the limited liability company has accorded to the new contribution under section 322B.40, subdivision 3, clause (1);

(2) determine what percentage the value stated under clause (1) will constitute, after the restatement required by this subdivision, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains;

(3) divide the value stated under clause (1) by the percentage determined under clause (2), yielding the total value, after the restatement required by this subdivision, of all contributions pertaining to the particular series or class;

(4) subtract the value stated under clause (1) from the value determined under clause (3), yielding the total value, after the restatement required by this subdivision, of all the old contributions pertaining to the particular series or class;

(5) subtract the value, as reflected in the required records before the restatement required by this subdivision, of the old contributions from the value determined under clause (4), yielding

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the value to be allocated among and added to the old contributions pertaining to the particular series or class; and

(6) allocate the value determined under clause (5) proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the required records accordingly.

The values determined under clause (5) and allocated and added under clause (6) may be positive, negative, or zero.

Subd. 4. **Restatement method for other series or classes.** Unless otherwise provided in the articles of organization or a member control agreement, this subdivision states the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains;

(1) determine the percentage by which the restatement under subdivision 3 has changed the total contribution value reflected in the required records for the series or class to which the new contribution pertains; and

(2) as to each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the required records by the percentage determined under clause (1). The percentage determined under clause (1) may be positive, negative, or zero.

Subd. 5. **New contributions may be aggregated.** If a limited liability company accepts more than one contribution pertaining to the same series or class at the same time, then for the purpose of the restatement required by this section the limited liability company may consider all those new contributions as if they were a single contribution.

### **322B.42 CONTRIBUTION AGREEMENTS.**

Subdivision 1. **Signed writing.** A contribution agreement, whether made before or after the formation of the limited liability company, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.

Subd. 2. **Irrevocable period.** Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the limited liability company, consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months.

Subd. 3. **Current and deferred payment.** A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board of governors, but a call made by the board of governors for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

Subd. 4. **Failure to pay remedies.** (a) Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the limited liability company may proceed to collect the amount due in the same manner as a debt due the limited liability company. If a would-be contributor does not make a required contribution of property or services, the limited liability company shall require the would-be contributor to contribute cash equal to that portion of the value, as stated in the limited liability company required records, of the contribution that has not been made.

(b) If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the limited liability company for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale.

If the membership interests that were subject to the contribution agreement are sold according to this paragraph, the limited liability company shall pay to the delinquent would-be contributor or to the delinquent would-be contributor's legal representative the lesser of (i) the excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale, and (ii) the amount actually paid by the delinquent would-be contributor. If the membership interests that were subject to the contribution agreement are not sold according to this paragraph, the limited liability company may collect the amount due in the same manner as a debt due the limited liability company or cancel the contribution agreement according to paragraph (c).



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(c) If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor and the membership interests that were subject to the defaulted contribution agreement have not been sold according to paragraph (b), the limited liability company may cancel the contribution agreement, the limited liability company may retain the portion of the contribution agreement price actually paid that does not exceed ten percent of the contribution agreement, and the limited liability company shall refund to the delinquent would-be contributor or the delinquent would-be contributor's legal representatives that portion of the contribution agreement price actually paid that exceeds ten percent of the contribution agreement price.

Subd. 5. **Restrictions on assignment.** Unless otherwise provided in the articles of organization or a member control agreement, a would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

### **322B.43 CONTRIBUTION ALLOWANCE AGREEMENTS.**

Subdivision 1. **Agreements permitted.** Subject to any restrictions in the articles of organization or a member control agreement, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors or by a manager pursuant to board authorization.

Subd. 2. **Writing required and terms to be stated.** Any contribution allowance agreement must be in writing, and the writing must state in full, summarize, or incorporate by reference all the agreement's terms, provisions, and conditions.

Subd. 3. **Restrictions on assignment.** Unless otherwise provided in the articles of organization or a member control agreement, a would-be contributor's rights under a contribution allowance agreement may not be assigned in whole or in part to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

### **322B.50 SHARING OF DISTRIBUTIONS.**

Unless otherwise provided in the articles of organization, or a member control agreement, or by the board of governors under section 322B.40, subdivisions 5 and 6, distributions of cash or other assets of a limited liability company, including distributions on termination of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the required records.

### **322B.51 INTERIM DISTRIBUTIONS.**

Except as provided in the articles of organization or a member control agreement, a member is entitled to receive distributions before the limited liability company's termination only as specified in the bylaws or by the act of the board of governors.

### **322B.52 DISTRIBUTION IN KIND.**

Except as provided in the articles of organization or a member control agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in the articles of organization or a member control agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

### **322B.53 STATUS AS A CREDITOR.**

At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

### **322B.54 LIMITATIONS ON DISTRIBUTION.**

Subdivision 1. **When distributions are permitted.** (a) The board of governors may authorize and cause the limited liability company to make a distribution only if the board of

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governors determines, in accordance with subdivision 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board of governors does not know before the distribution is made that the determination was or has become erroneous.

(b) The limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.

(c) The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subdivision 3.

(d) The right of the board of governors to authorize, and the limited liability company to make, distributions may be prohibited, limited, or restricted by the articles of organization, a member control agreement, or bylaws or an agreement.

**Subd. 2. Determination presumed proper.** A determination that the limited liability company will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 322B.663 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 322B.663 or 322B.56 will accrue if the requirements of this subdivision have been met.

**Subd. 3. Effect measured.** (a) In the case of a distribution made by a limited liability company in connection with a redemption of its membership interests, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the limited liability company, or as of the date on which the member ceases to be a member of the limited liability company, whichever is the earliest.

(b) The effect of any other distribution must be measured as of the date of its authorization if payment occurs 120 days or less following the date of authorization, or as of the date of payment if payment occurs more than 120 days following the date of authorization.

(c) Indebtedness of a limited liability company incurred or issued in a distribution in accordance with this section to a member who as a result of the transaction is no longer a member is on a parity with the indebtedness of the limited liability company to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the limited liability company or a related organization, or subject to any other agreement between the limited liability company and the member.

(d) Sections 322B.54 to 322B.56 supersede all other statutes of this state with respect to distributions, and the provisions of sections 513.41 to 513.51 do not apply to distributions made by a limited liability company governed by this chapter.

**Subd. 4. Restrictions.** (a) A distribution may be made to the owners of a class or series of membership interests only if:

(1) all amounts payable to the owners of membership interests having a preference for the payment of that kind of distribution, other than those owners who give notice to the limited liability company of their agreement to waive their rights to that payment, are paid; and

(2) the payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of liquidation to the owners of membership interests having preferential rights, unless the distribution is made to those members in the order and to the extent of their respective priorities or the owners of membership interests who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

A determination that the payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of termination to the owners of membership interests having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 322B.663 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. Liability under section 322B.663 or 322B.56 will not arise if the requirements of this paragraph are met.

(b) If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes unless those owners who do not receive

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distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

### **322B.55 LIABILITY OF MEMBERS FOR ILLEGAL DISTRIBUTIONS.**

Subdivision 1. **Liability.** A member who receives a distribution made in violation of section 322B.54 is liable to the limited liability company, its receiver or other person winding up its affairs, or a governor under section 322B.56, subdivision 2, but only to the extent that the distribution received by the member exceeded the amount that properly could have been paid under section 322B.54.

Subd. 2. **Statute of limitations.** An action must not be commenced under this section more than two years from the date of the distribution.

### **322B.56 LIABILITY OF GOVERNORS FOR ILLEGAL DISTRIBUTIONS.**

Subdivision 1. **Liability.** In addition to any other liabilities, a governor who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 322B.54, subdivision 1 or 4, or a restriction contained in the articles of organization, a member control agreement, or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 322B.663, is liable to the limited liability company, its receiver or any other person winding up its affairs jointly and severally with all other governors so liable and to other governors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 322B.54.

Subd. 2. **Contribution from members.** A governor against whom an action is brought under this section with respect to a distribution may implead in that action all members who received the distribution and may compel pro rata contribution from them in that action to the extent provided in section 322B.55, subdivision 1.

Subd. 3. **Impleader and contribution from governors.** A governor against whom an action is brought under this section with respect to a distribution may implead in that action all other governors who voted for or consented in writing to the distribution and may compel pro rata contribution from them in that action.

Subd. 4. **Statute of limitations.** An action must not be commenced under this section more than two years from the date of the distribution.

### **322B.60 ORGANIZATION.**

Subdivision 1. **Role of organizers.** If the first board of governors is not named in the articles of organization, the organizers may elect the first board of governors or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.

Subd. 2. **Meeting.** After the filing of articles of organization, the organizers or the governors named in the articles of organization shall either hold an organizational meeting at the call of a majority of the organizers or of the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting bylaws, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting. Organizers and governors may waive notice of an organizational meeting in the same manner that a governor may waive notice of meetings of the board under section 322B.643, subdivision 5.

### **322B.603 BYLAWS.**

Subdivision 1. **Generally.** A limited liability company may, but need not, have bylaws, which may, but need not, be known as an operating agreement. The bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with law or the articles of organization. An act of the board under subdivision 2 and of the members under subdivision 3 will be considered part of the bylaws only if the act expressly states that it is intended to constitute or revise the bylaws.

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Subd. 2. **Power of board of governors.** Initial bylaws may be adopted pursuant to section 322B.60 by the organizers or by the first board of governors. Unless reserved by the articles of organization or a member control agreement to the members, the power to adopt, amend, or repeal the bylaws is vested in the board of governors. The power of the board of governors is subject to the power of the members, exercisable in the manner provided in subdivision 3, to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board of governors. After the adoption of the initial bylaws, the board of governors shall not adopt, amend, or repeal a bylaws provision fixing a quorum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaws provision to increase the number of governors.

Subd. 3. **Power of members and procedure.** If a member or members owning three percent or more of the voting power of the members entitled to vote propose a resolution for action by the members to adopt, amend, or repeal bylaws provisions adopted, amended, or repealed by the board of governors and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 322B.15, subdivisions 2 to 4, for amendment of the articles of organization.

### **322B.606 BOARD OF GOVERNORS.**

Subdivision 1. **Board of governors to manage.** The business and affairs of a limited liability company is to be managed by or under the direction of a board of governors, subject to the provisions of subdivision 2 and section 322B.37. The first board of governors may be named in the articles of organization or a member control agreement or elected by the organizers pursuant to section 322B.60 or by the members.

Subd. 2. **Member management.** The owners of the membership interests entitled to vote for governors of the limited liability company may, by unanimous affirmative vote, take any action that this chapter requires or permits the board of governors to take. As to an action taken by the members in that manner:

(1) the governors have no duties, liabilities, or responsibilities as governors under this chapter with respect to or arising from the action;

(2) the members collectively and individually have all of the duties, liabilities, and responsibilities of governors under this chapter with respect to and arising from the action;

(3) if the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board of governors, either with or without approval or adoption by the members, the action is considered to have been approved or adopted by the board of governors; and

(4) a requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board of governors is satisfied by a statement that the members have taken the action under this subdivision.

### **322B.61 NUMBER.**

The board of governors consists of one or more governors. The number of governors must be fixed by or in the manner provided in the articles of organization, a member control agreement, or the bylaws. The number of governors may be increased or, subject to section 322B.636, decreased at any time by amendment to or in the manner provided in the articles, a member control agreement, or bylaws.

### **322B.613 QUALIFICATIONS AND ELECTION.**

Governors must be natural persons. The method of election and any additional qualifications for governors may be imposed by or in the manner provided in the articles, a member control agreement, or bylaws.

### **322B.616 TERMS.**

Unless fixed terms are provided for in the articles, a member control agreement, or bylaws, a governor serves for an indefinite term that expires at the next regular meeting of the members. A fixed term of a governor must not exceed five years. A governor holds office for the term for

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which the governor was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the governor.

**322B.62 ACTS NOT VOID OR VOIDABLE.**

The expiration of a governor's term with or without the election of a qualified successor does not make prior or subsequent acts of the governors or the board of governors void or voidable.

**322B.623 COMPENSATION.**

Subject to any limitations in the articles, a member control agreement, or bylaws, the board of governors may fix the compensation of governors.

**322B.626 CLASSIFICATION OF GOVERNORS.**

Governors may be divided into classes as provided in the articles, a member control agreement, or bylaws.

**322B.63 VOTING FOR GOVERNORS; CUMULATIVE VOTING.**

Subdivision 1. **Required vote.** Unless otherwise provided in the articles or a member control agreement, governors are elected by a plurality of the voting power of the membership interests present and entitled to vote on the election of governors at a meeting at which a quorum is present.

Subd. 2. **Cumulative voting rights.** Unless the articles of organization or a member control agreement provide that there is no cumulative voting, and except as provided in section 322B.636, subdivision 5, each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting, or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:

(1) the presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and

(2) each member shall cumulate that voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.

Subd. 3. **Modifications of cumulative voting.** No amendment to the articles or bylaws that has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

**322B.633 RESIGNATION.**

A governor may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective time is specified in the notice.

**322B.636 REMOVAL OF GOVERNORS.**

Subdivision 1. **Modification.** The provisions of this section apply unless modified by the articles of organization, a member control agreement, or the bylaws.

Subd. 2. **Removal of governors.** A governor may be removed at any time, with or without cause, if:

(1) the governor was named by the board of governors to fill a vacancy;

(2) the members have not elected governors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and

(3) a majority of the remaining governors present affirmatively vote to remove the governor.

Subd. 3. **Removal by members.** Except as provided in subdivision 4, any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote at an election of governors; provided that if a governor has been elected solely by the holders of a

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class or series of membership interests, as stated in the articles, any member control agreement, or bylaws, then that governor may be removed only by the affirmative vote of the holders of a majority of the voting power of all membership interests of that class or series entitled to vote at an election of that governor.

Subd. 4. **Exception for limited liability companies with cumulative voting.** In a limited liability company having cumulative voting, unless the entire board of governors is removed simultaneously, a governor is not removed from the board of governors if there are cast against removal of the governor the votes of a proportion of the voting power sufficient to elect the governor at an election of the entire board of governors under cumulative voting.

Subd. 5. **Election of replacements.** New governors may be elected at a meeting at which governors are removed. If the limited liability company allows cumulative voting and a member notifies the presiding manager at any time before the election of new governors of intent to cumulate the votes of the member, the presiding manager shall announce before the election that cumulative voting is in effect, and members shall cumulate their votes as provided in section 322B.63, subdivision 1, clause (2).

#### **322B.64 VACANCIES.**

Unless different rules for filling vacancies are provided for in the articles, a member control agreement, or bylaws:

(1)(i) vacancies on the board of governors resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and

(ii) vacancies on the board of governors resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase; and

(2) each governor elected under this section to fill a vacancy holds office until a qualified successor is elected by the members at the next regular or special meeting of the members.

#### **322B.643 BOARD OF GOVERNORS MEETINGS.**

Subdivision 1. **Time and place.** Meetings of the board of governors may be held from time to time as provided in the articles of organization, a member control agreement, or bylaws at any place within or without the state that the board of governors may select or by any means described in subdivision 2. If the board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member control agreement, or bylaws provide otherwise. The board of governors may determine under subdivision 2 that a meeting of the board of governors shall be held solely by means of remote communication.

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

Subd. 3. **Participation in meetings by means of remote communication.** A governor may participate in a board of governors 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 governor, other governors so participating, and all governors 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.

Subd. 4. **Calling meetings and notice.** (a) Unless the articles of organization, a member control agreement, or bylaws provide for a different time period, a governor may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings under section 322B.60, subdivision 2, at least three days' notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles, a member control agreement, or bylaws require it.

(b) Any notice to a governor given under any provision of this chapter, the articles, a member control agreement, or the bylaws by a form of electronic communication consented to by the governor to whom the notice is given is effective when given. The notice is deemed given if by:

(1) facsimile communication, when directed to a telephone number at which the governor has consented to receive notice;

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(2) electronic mail, when directed to an electronic mail address at which the governor has consented to receive notice; and

(3) any other form of electronic communication by which the governor has consented to receive notice, when directed to the governor.

(c) Consent by a governor to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent so given may be relied upon until revoked by the governor, provided that no revocation affects the validity of any notice given before receipt of revocation of the consent.

Subd. 5. **Previously scheduled meetings.** If the day or date, time, and place of a board of governors meeting have been provided in the articles, a member control agreement, or bylaws, or announced at a previous meeting of the board of governors, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Subd. 6. **Waiver of notice.** A governor may waive notice of a meeting of the board of governors. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, by authenticated electronic communication, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except where the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

### **322B.646 ABSENT GOVERNORS.**

If the articles of organization, a member control agreement, or bylaws so provide, a governor may give advance written consent or opposition to a proposal to be acted on at a board of governors meeting. If the governor is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a governor present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the governor has consented or objected.

### **322B.65 QUORUM.**

A majority, or a larger or smaller proportion or number provided in the articles of organization, a member control agreement, or bylaws, of the governors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the governors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the governors present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

### **322B.653 ACT OF THE BOARD OF GOVERNORS.**

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

### **322B.656 ACTION WITHOUT A MEETING.**

Subdivision 1. **Method.** An action required or permitted to be taken at a board of governors meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the governors. If the articles or a member control agreement so provide, any action, other than an action requiring member approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of governors that would be required to take the same action at a meeting of the board of governors at which all governors were present.

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Subd. 2. **Effective time.** The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of governors, unless a different effective time is provided in the written action.

Subd. 3. **Notice and liability.** When written action is permitted to be taken by less than all governors, all governors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

#### **322B.66 COMMITTEES.**

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

Subd. 2. **Membership.** Committee members must be natural persons. Unless the articles, or a member control agreement, or bylaws provide for a different membership or manner of appointment, a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present.

Subd. 3. **Procedure.** Sections 322B.643 to 322B.656 apply to committees and members of committees to the same extent as those sections apply to the board of governors and governors.

Subd. 4. **Minutes.** Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any governor.

Subd. 5. **Standard of conduct.** The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a governor with the standard of conduct set forth in section 322B.663.

Subd. 6. **Committee members considered governors.** Committee members are considered to be governors for purposes of sections 322B.663, 322B.666, and 322B.699.

Subd. 7. **Subcommittees.** Unless otherwise provided in the articles, the bylaws, a member control agreement, or the resolution of the board establishing the committee, 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. In this chapter, unless the language or context clearly indicates that a different meaning is intended, any reference to a committee is deemed to include a subcommittee, and any reference to a committee member is deemed to include a subcommittee member.

#### **322B.663 STANDARD OF CONDUCT.**

Subdivision 1. **Standard and liability.** A governor shall discharge the duties of the position of governor in good faith, in a manner the governor reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a governor of the limited liability company.

Subd. 2. **Reliance.** (a) A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) one or more managers or employees of the limited liability company whom the governor reasonably believes to be reliable and competent in the matters presented;

(2) counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of governors upon which the governor does not serve, duly established in accordance with section 322B.66, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.

(b) Paragraph (a) does not apply to a governor who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

Subd. 3. **Presumption of assent and dissent.** A governor who is present at a meeting of the board of governors when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:



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(1) objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;

(2) votes against the action at the meeting; or

(3) is prohibited by section 322B.666 from voting on the action.

**Subd. 4. Elimination or limitation of liability.** A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles of organization or a member control agreement. Neither the articles nor a member control agreement may eliminate or limit the liability of a governor:

(1) for any breach of the governor's duty of loyalty to the limited liability company or its members;

(2) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(3) under section 80A.76 or 322B.56;

(4) for any transaction from which the governor derived an improper personal benefit; or

(5) for any act or omission occurring before the date when the provision in the articles of organization or a member control agreement eliminating or limiting liability becomes effective.

**Subd. 5. Considerations.** In discharging the duties of the position of governor, a governor may, in considering the best interests of the limited liability company, consider the interests of the limited liability company's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the limited liability company and its members including the possibility that these interests may be best served by the continued independence of the limited liability company.

### **322B.666 GOVERNOR CONFLICTS OF INTEREST.**

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

(1) 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 limited liability company at the time it was authorized, approved, or ratified;

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

(3) the material facts as to the contract or transaction and as to the governor's or governors' 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 governors or committee members currently holding office, but the interested governor or governors shall not be counted in determining the presence of a quorum and shall not vote; or

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

**Subd. 2. Material financial interest.** For purposes of this section:

(1) a resolution fixing the compensation of a governor or fixing the compensation of another governor as a governor, manager, employee, or agent of the limited liability company, is not void or voidable or considered to be a contract or other transaction between a limited liability company and one or more of its governors for purposes of this section even though the governor receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified or even though other governors voting upon the resolution are also receiving compensation from the limited liability company; and

(2) a governor has a material financial interest in each organization in which the governor, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of

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brothers and sisters, and the brothers and sisters of the spouse of the governor, or any combination of them have a material financial interest. For purposes of this section, a contract or other transaction between a limited liability company and the spouse, parents, children and spouses of children, brothers and sisters, spouses of brothers and sisters, and the brothers and sisters of the spouse of a governor, or any combination of them, is considered to be a transaction between the limited liability company and the governor.

#### **322B.67 MANAGERS REQUIRED.**

A limited liability company must have one or more natural persons exercising the functions of the offices, however designated, of chief manager and treasurer.

#### **322B.673 DUTIES OF REQUIRED MANAGERS.**

Subdivision 1. **Presumption and modification.** Unless the articles of organization, a member control agreement, or the bylaws provide otherwise, the chief manager and treasurer have the duties specified in this section.

Subd. 2. **Chief manager.** The chief manager shall:

- (1) have general active management of the business of the limited liability company;
- (2) when present, preside at all meetings of the board of governors and of the members;
- (3) see that all orders and resolutions of the board of governors are carried into effect;
- (4) sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the limited liability company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles, a member control agreement, or bylaws or the board of governors to some other manager or agent of the limited liability company;
- (5) maintain records of and, whenever necessary, certify all proceedings of the board of governors and the members; and
- (6) perform other duties prescribed by the board of governors.

Subd. 3. **Treasurer.** The treasurer shall:

- (1) keep accurate financial records for the limited liability company;
- (2) deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of governors;
- (3) endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of governors, making proper vouchers for them;
- (4) disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of governors;
- (5) give to the chief manager and the board of governors, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
- (6) perform other duties prescribed by the board of governors or by the chief manager.

#### **322B.676 OTHER MANAGERS.**

The board of governors may elect or appoint, in a manner set forth in the articles of organization, a member control agreement, or bylaws or in a resolution approved by the affirmative vote of a majority of the governors present, any other managers the board of governors considers necessary for the operation and management of the limited liability company. Each of these managers has the powers, rights, duties, responsibilities, and terms in office provided for in the articles, a member control agreement, or bylaws or determined by the board of governors. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the governors present, and subject to any member control agreement, the chief manager may appoint one or more managers, other than the treasurer.

#### **322B.679 MULTIPLE MANAGERIAL POSITIONS.**

Any number of managerial positions or functions of those positions may be held or exercised by the same person. If a document must be signed by persons holding different positions or functions and a person holds or exercises more than one of those positions or functions, that

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person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

### **322B.68 MANAGERS CONSIDERED ELECTED.**

In the absence of an election or appointment of managers by the board of governors, the person or persons exercising the principal functions of the chief manager or the treasurer are considered to have been elected to those offices, except for the purpose of determining the location of the principal executive office, which in that case is the registered office of the limited liability company.

### **322B.683 CONTRACT RIGHTS.**

The election or appointment of a person as a manager or agent does not, of itself, create contract rights. A limited liability company may enter into a contract with a manager or agent for a period of time if, in the board of governors' judgment, the contract would be in the best interests of the limited liability company. The fact that the contract may be for a term longer than the terms of the governors who authorized or approved the contract does not make the contract void or voidable.

### **322B.686 RESIGNATION, REMOVAL AND VACANCY.**

Subdivision 1. **Resignation.** A manager may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective date is specified in the notice.

Subd. 2. **Removal.** Unless otherwise provided in the articles of organization, the bylaws, or a member control agreement, a manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present. A manager appointed by the chief manager also may be removed at any time, with or without cause, by the chief manager. The articles of organization, the bylaws, or the member control agreement may provide other manners of removing a manager. Removal is without prejudice to any contractual rights of the manager.

Subd. 3. **Vacancy.** A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief manager or treasurer must, be filled for the unexpired portion of the term in the manner provided in the articles, a member control agreement, or bylaws, or determined by the board of governors, or pursuant to section 322B.68.

### **322B.689 DELEGATION.**

Unless prohibited by the articles, a member control agreement, or bylaws or by a resolution approved by the affirmative vote of a majority of the governors present, a manager elected or appointed by the board of governors may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

### **322B.69 STANDARD OF CONDUCT.**

A manager shall discharge the duties of an office in good faith, in a manner the manager reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 322B.689 is considered a manager for purposes of this section and sections 322B.38 and 322B.699.

### **322B.693 LOANS, GUARANTEES AND SURETYSHIP.**

Subdivision 1. **Prerequisites.** A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:

- (1) is in the usual and regular course of business of the limited liability company;

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(2) is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a business relationship, or an organization to which the limited liability company has the power to make donations, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;

(3) is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or

(4) whether or not any separate consideration has been or promised to the limited liability company, has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons, or the unanimous affirmative vote of all members, whether or not ordinarily entitled to vote.

Subd. 2. **Interest and security.** A loan, guaranty, surety contract, or other financial assistance under subdivision 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in a member's financial rights in the limited liability company.

Subd. 3. **Banking authority not granted.** This section does not grant any authority to act as a bank or to carry on the business of banking.

#### **322B.696 ADVANCES.**

A limited liability company may, without a vote of the governors or its members, advance money to its members who provide services, governors, managers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

#### **322B.699 INDEMNIFICATION.**

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

(b) "Limited liability company" includes a domestic or foreign limited liability company that was the predecessor of the limited liability company 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 governor, the position of governor in a limited liability company, (2) with respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of governors, the employment relationship undertaken by an employee of the 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 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.

Subd. 2. **Indemnification.** (a) Subject to the provisions of subdivision 4, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements,

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incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(1) has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(2) acted in good faith;

(3) received no improper personal benefit and section 322B.666, if applicable, has been satisfied;

(4) in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

(5) in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the best interests of the limited liability company, or in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (3), reasonably believed that the conduct was not opposed to the best interests of the limited liability company. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the limited liability company if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.

Subd. 3. **Advances.** Subject to the provisions of subdivision 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:

(1) upon receipt by the limited liability company of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subdivision 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the limited liability company, if it is ultimately determined that the criteria for indemnification have not been satisfied; and

(2) after a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by clause (1) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

Subd. 4. **Prohibition or limit on indemnification or advances.** The articles of organization, a member control agreement, or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subdivisions 2 and 3 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles of organization, a member control agreement, or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

Subd. 5. **Reimbursement to witnesses.** This section does not require, or limit the ability of, a limited liability company to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

Subd. 6. **Determination of eligibility.** (a) All determinations whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 must be made:

(1) by the board of governors by a majority of a quorum. If the governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

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(2) if a quorum under clause (1) cannot be obtained, by a majority of a committee of the board of governors, consisting solely of two or more governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of governors including governors who are parties;

(3) if a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to clause (1) or (2) or, if the requisite quorum of the full board of governors cannot be obtained and the committee cannot be established, by a majority of the full board of governors including governors who are parties;

(4) if a determination is not made under clauses (1) to (3), by the affirmative vote of the members required by section 322B.346, but the membership interests held by parties to the proceeding must not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or

(5) if an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the limited liability company or (ii) a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement or expenses.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made by an annually appointed committee of the board of governors, having at least one member who is a governor. The committee shall report at least annually to the board of governors concerning its actions.

Subd. 7. **Insurance.** A limited liability company may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the limited liability company would have been required to indemnify the person against the liability under the provisions of this section.

Subd. 8. **Disclosure.** A limited liability company that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members.

Subd. 9. **Indemnification of other persons.** Nothing in this section must be construed to limit the power of the limited liability company to indemnify persons other than a governor, manager, member, employee, or member of a committee of the board of the limited liability company, by contract or otherwise.

### **322B.70 MERGER, EXCHANGE, TRANSFER.**

Subdivision 1. **Merger.** With or without a business purpose, a limited liability company may merge with:

(1) one or more limited liability companies pursuant to a plan of merger approved in the manner provided in sections 322B.71 to 322B.75;

(2) one or more domestic corporations under a plan of merger approved in the manner provided in sections 322B.71 to 322B.75;

(3) one or more foreign corporations or foreign limited liability companies pursuant to a plan of merger approved in the manner provided in sections 322B.71 to 322B.75 and 322B.76; and

(4) one or more cooperatives organized under chapter 308A or 308B, in the manner provided by and subject to the limitations in sections 322B.71 to 322B.75 and 322B.755.

Subd. 2. **Exchange.** (a) A limited liability company may acquire all of the ownership interests of one or more classes or series of another domestic or foreign limited liability company pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75.

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(b) A limited liability company may acquire all of the ownership interests of one or more classes or series of a domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75.

(c) A domestic corporation may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75.

(d) A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75 and 322B.76.

Subd. 3. **Transfer.** A limited liability company may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 322B.77.

Subd. 4. **Permitted transactions.** A limited liability company may participate in a merger or exchange only as permitted by this section.

#### **322B.71 PLAN OF MERGER OR EXCHANGE.**

Subdivision 1. **Contents of plan.** A plan of merger or exchange must contain:

(1) the name of the limited liability company and each other constituent organization proposing to merge or participate in an exchange, and:

(i) in the case of a merger, the name of the surviving organization, which may be the limited liability company or another constituent organization; or

(ii) in the case of an exchange, the name of the acquiring organization;

(2) the terms and conditions of the proposed merger or exchange;

(3)(i) in the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of, or other ownership interests in, the surviving organization or of any other organization, or, in whole or in part, into money or other property; or

(ii) in the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of, or other ownership interests in, the acquiring organization or any other organization or, in whole or part, for money or other property;

(4) in the case of a merger, a statement of any amendments to the articles of organization or articles of incorporation, as the case may be, of the surviving organization proposed as part of the merger; and

(5) any other provisions with respect to the proposed merger or exchange that are considered necessary or desirable.

Subd. 2. **Other agreements.** The procedure authorized by this section does not limit the power of a limited liability company to acquire all or part of the ownership interests of one or more classes or series of any other organization through a negotiated agreement with the owners or otherwise.

#### **322B.72 PLAN APPROVAL BY LIMITED LIABILITY COMPANY.**

Subdivision 1. **Board of governors approval and notice to members.** A resolution containing the plan of merger or exchange must be approved by the affirmative vote of a majority of the board members present at a meeting of the board of governors of each constituent organization that is a limited liability company and must then be submitted at a regular or a special meeting to the members of the limited liability company. If members owning any class or series of membership interest in the limited liability company are entitled to vote on the plan of merger or exchange pursuant to this section, written notice must be given to every member of the limited liability company, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 322B.34. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

Subd. 2. **Approval by members.** (a) At the meeting a vote of the members must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote. Except as provided in paragraph (b) or a member control agreement, a class or series of membership interests of the limited liability company is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization, entitle the class or series of membership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

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(b) A class or series of membership interests of the limited liability company is not entitled to vote as a class or series if the plan of merger or exchange effects a cancellation or exchange of all membership interests of the limited liability company of all classes and series that are existing immediately before the merger or exchange and owners of membership interests of that class or series are entitled to obtain payment for the fair value of their membership interests under section 322B.383 in the event of the merger or exchange.

Subd. 3. **Approval by other constituent organizations.** If a constituent organization in the merger or exchange is an organization other than a limited liability company, the plan of merger or exchange must also be approved in the manner provided for in the statute that governs that constituent organization.

### **322B.73 ARTICLES OF MERGER OR EXCHANGE AND CERTIFICATE.**

Subdivision 1. **Contents of articles of merger or exchange.** Upon receiving the approval required by section 322B.72, articles of merger or exchange must be prepared that contain the plan of merger or exchange, and a statement that the plan has been approved by each constituent organization pursuant to this chapter.

Subd. 2. **Articles signed and filed.** The articles of merger or exchange must be signed on behalf of each constituent organization and filed with the secretary of state.

Subd. 3. **Certificate of merger or exchange.** The secretary of state shall issue a certificate of merger to the surviving organization, or its legal representative, and a certificate of exchange to the acquiring organization, or its legal representative.

### **322B.74 ABANDONMENT BY LIMITED LIABILITY COMPANY.**

Subdivision 1. **By members or plan.** After a plan of merger or exchange has been approved by the members entitled to vote on the approval of the plan as provided in section 322B.72, and before the effective date of the plan, it may be abandoned:

(1) if the members of each limited liability company that is a constituent organization who hold membership interests entitled to vote on the approval of the plan as provided in section 322B.72 approve the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the membership interests entitled to vote and, if the members of a limited liability company that is a constituent organization are not entitled to vote on the approval of the plan under section 322B.72, the board of governors of that limited liability company has approved the abandonment by the affirmative vote of a majority of the board members present, and the abandonment has been approved in the manner provided for in the statute that governs each constituent organization that is not a limited liability company;

(2) if the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(3) pursuant to subdivision 2.

Subd. 2. **By the board of governors.** A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution that abandons the plan of merger or exchange and is approved by the board of governors of any limited liability company that is a constituent, subject to the contract rights of any other person under the plan.

Subd. 3. **Filing of articles.** If articles of merger or exchange have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under subdivision 1, clause (1), the constituent organizations or any one of them, in the case of abandonment under subdivision 1, clause (2), or the abandoning organization in the case of abandonment under subdivision 2, shall file with the secretary of state articles of abandonment that contain:

(1) the names of the constituent organizations;

(2) the provision of this section under which the plan is abandoned; and

(3) if the plan is abandoned under subdivision 2, the text of the resolution that was approved by the board of governors abandoning the plan.

### **322B.75 EFFECTIVE DATE OF MERGER OR EXCHANGE AND EFFECT.**

Subdivision 1. **Effective date or time.** A merger or exchange is effective when the articles of merger or exchange are filed with the secretary of state or on a later date or at a later time specified in the articles of merger or exchange.

Subd. 2. **Effect on constituent organizations.** When a merger becomes effective:

(1) the constituent organizations become a single entity, the surviving limited liability company or corporation, as the case may be;



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(2) the separate existence of all constituent organizations except the surviving organization ceases;

(3) as to any limited liability company that was a constituent organization and is not the surviving organization, the articles of merger serve as the articles of termination, and, unless previously filed, the notice of dissolution;

(4)(i) if the surviving organization is a limited liability company, the surviving limited liability company has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a limited liability company under this chapter; and

(ii) if the surviving organization is not a limited liability company, the surviving organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of the organization under its governing law;

(5) the surviving organization, whether a limited liability company, a foreign limited liability company, a domestic corporation, a foreign corporation, or a cooperative organized under chapter 308A or 308B, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be. The title to any real estate or any interest in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;

(6) the surviving organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations. A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization. Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and

(7) the articles of organization or articles of incorporation, as the case may be, of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

**Subd. 3. Effect on members.** When a merger or exchange becomes effective, the membership interests in a limited liability company to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are considered to be exchanged in the case of an exchange. The members owning those membership interests are entitled only to the ownership interests, securities, money, or other property into which those membership interests have been converted or for which those membership interests have been exchanged in accordance with the plan, subject to any dissenters' rights under section 322B.383.

### **322B.755 MERGER OF DOMESTIC COOPERATIVE INTO A DOMESTIC LIMITED LIABILITY COMPANY.**

**Subdivision 1. Definition.** As used in this section, "domestic cooperative" means a cooperative organized under chapter 308A or 308B.

**Subd. 2. Authorization; limitations.** (a) A limited liability company may merge with a domestic cooperative only as provided by this section. A limited liability company may merge with one or more domestic cooperatives if:

(1) only one limited liability company and only one or more domestic cooperatives are parties to the merger;

(2) when the merger becomes effective, the separate existence of each domestic cooperative ceases and the limited liability company is the surviving organization;

(3) as to each domestic cooperative, the plan of merger is initiated and adopted, and the merger is effectuated, as provided in section 308B.801; and

(4) as to the limited liability company, the plan of merger complies with section 322B.71, the plan of merger is approved as provided in section 322B.72, and the articles of merger are prepared, signed, and filed as provided in section 322B.73.

(b) For purposes of a merger authorized by this section:

(1) the term "constituent organization" as used in sections 322B.71, subdivision 1, clause (1); 322B.71, subdivision 1, clause (3), item (i); 322B.73; and 322B.75, includes a domestic cooperative;

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(2) the term "constituent organization" as used in section 322B.72 does not include a domestic cooperative;

(3) the term "ownership interests" as used in section 322B.71, subdivision 1, clause (3), item (i), includes membership interests in a domestic cooperative;

(4) notwithstanding sections 322B.71, subdivision 1, clause (1), item (i); 322B.71, subdivision 1, clause (4); 322B.75, subdivision 2, clause (1); 322B.75, subdivision 2, clause (4), item (i); and 322B.75, subdivision 2, clause (5), the surviving organization must be the limited liability company;

(5) section 322B.75, subdivision 2, clause (3), does not apply;

(6) the term "ownership interests" includes membership interests in a domestic cooperative and the term "owners" includes members of a domestic cooperative; and

(7) "dissenters rights" includes dissenters rights under the law governing the domestic cooperative.

Subd. 3. **Abandonment.** Section 308B.835 governs the abandonment by a domestic cooperative of a merger authorized by this section.

### **322B.76 MERGER OR EXCHANGE WITH FOREIGN CORPORATION OR A FOREIGN LIMITED LIABILITY COMPANY.**

Subdivision 1. **When permitted.** A limited liability company may merge with or participate in an exchange with a foreign corporation or a foreign limited liability company by following the procedures set forth in this section, if:

(1) with respect to a merger, the merger is permitted by the laws of the state under which the foreign corporation or foreign limited liability company is incorporated or organized; and

(2) with respect to an exchange, the organization whose ownership interests will be acquired is either a limited liability company or a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign corporation or foreign limited liability company is incorporated or organized.

Subd. 2. **Laws applicable before transaction.** Each limited liability company shall comply with the provisions of sections 322B.70 to 322B.76 with respect to the merger or exchange of ownership interests of organizations and each foreign corporation or foreign limited liability company shall comply with the applicable provisions of the laws under which it was incorporated or organized or by which it is governed.

Subd. 3. **Surviving domestic limited liability company.** If the surviving organization in a merger will be a domestic limited liability company, it shall comply with all the provisions of this chapter.

Subd. 4. **Surviving foreign corporation or foreign limited liability company.** If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, it shall comply, as the case may be, with the provisions of chapter 303 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies. In every case the surviving foreign corporation or foreign limited liability company shall file with the secretary of state:

(1) an agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;

(2) an irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

(3) an agreement that it will promptly pay to any dissenting members of each constituent domestic limited liability company the amount, if any, to which they are entitled under section 322B.386.

### **322B.77 TRANSFER OF ASSETS AND WHEN PERMITTED.**

Subdivision 1. **Member approval and when not required.** A limited liability company may, by affirmative vote of a majority of the governors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, and without member approval:

(1) sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

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(2) grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

(3) transfer any or all of its property to an organization all the ownership interests of which are owned directly or indirectly through wholly-owned organizations, by the limited liability company.

Subd. 2. **Member approval and when required.** (a) A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

(b) Member approval is not required under paragraph (a) if, following the sale, lease, transfer, or other disposition of its property and assets, the limited liability company retains a significant continuing business activity. If a limited liability company retains a business activity that represented at least (i) 25 percent of the limited liability company's total assets at the end of the most recently completed fiscal year and (ii) 25 percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of clauses (i) and (ii), then the limited liability company will conclusively be deemed to have retained a significant continuing business activity.

Subd. 3. **Signing of documents.** Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current managers or authorized agents or, if the limited liability company no longer exists, by its last managers.

Subd. 4. **Transferee liability.** The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state. A disposition of all or substantially all of a limited liability company's properties and assets under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee is not liable solely because it is deemed to be a continuation of the transferor.

### **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.

### **322B.80 DISSOLUTION.**

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) prior to accepting contributions pursuant to section 322B.803;

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

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

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

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

Subd. 2. **Procedures following dissolution.** A limited liability company dissolved by one of the dissolution events specified in subdivision 1 must be wound up and terminated under the following dissolution provisions:

(1) when a limited liability company is dissolved under subdivision 1, clause (1), by reason of the expiration of its limited period of duration, the limited liability company must be wound up and terminated under sections 322B.81 to 322B.82, 322B.826, 322B.83, and 322B.873;

(2) when a limited liability company is dissolved under subdivision 1, clause (2), by reason of a court order, the limited liability company must be wound up and terminated under sections 322B.83 to 322B.856;

(3) when a limited liability company is dissolved under subdivision 1, clause (3), by its organizers, the limited liability company must be wound up and terminated under sections 322B.803 and 322B.81 to 322B.83;

(4) when a limited liability company is dissolved under subdivision 1, clause (4), by its members, the limited liability company must be wound up and terminated under sections 322B.806 to 322B.83 and 322B.873; and

(5) when a limited liability company is dissolved under subdivision 1, clause (5), by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 322B.81 to 322B.82, 322B.826, 322B.83, and 322B.873.

Subd. 3. **Security interests.** Notwithstanding any provision of law, articles of organization, member control agreement, bylaws, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights, or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights, or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with chapter 336.

**322B.803 NONJUDICIAL DISSOLUTION AND TERMINATION PRIOR TO ACCEPTING CONTRIBUTIONS.**

Subdivision 1. **Manner.** A limited liability company that has not accepted contributions may be dissolved and terminated by the organizers or governors in the manner set forth in this section.

Subd. 2. **Articles of dissolution and termination.** (a) A majority of the organizers or governors shall sign articles of dissolution and termination containing:

(1) the name of the limited liability company;

(2) the date of organization;

(3) a statement that contributions have not been accepted;

(4) a statement that no debts remain unpaid.

(b) The articles of dissolution and termination shall be filed with the secretary of state.

Subd. 3. **Effective date.** When the articles of dissolution and termination have been filed with the secretary of state, the limited liability company is terminated.

Subd. 4. **Certificate of termination.** The secretary of state shall issue to the terminated limited liability company or its legal representative a certificate of termination that contains:

(1) the name of the limited liability company;

(2) the date and time the articles of dissolution and termination were filed with the secretary of state; and

(3) a statement that the limited liability company is terminated.

**322B.806 NONJUDICIAL DISSOLUTION AFTER ACCEPTING CONTRIBUTIONS.**

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

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

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

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

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

#### **322B.81 FILING NOTICE OF DISSOLUTION AND EFFECT.**

Subdivision 1. **Contents.** If dissolution of the limited liability company is approved pursuant to section 322B.806, subdivision 2, or it occurs under section 322B.80, subdivision 1, clause (1) or (5), the limited liability company shall file with the secretary of state a notice of dissolution. The notice must contain:

(1) the name of the limited liability company;

(2)(i) if the dissolution is approved pursuant to section 322B.806, subdivision 2, the date and place of the meeting at which the resolution was approved; and a statement that the requisite vote of the members was received, or that members validly took action without a meeting;

(ii) if the dissolution occurs under section 322B.80, subdivision 1, clause (1), by the expiration of the limited liability company's duration, a statement of the expiration date; and

(iii) if the dissolution occurs under section 322B.80, subdivision 1, clause (5), by the termination of a membership interest of a member, a statement that the continued membership of a member has terminated and the date of that termination.

Subd. 2. **Winding up.** When the notice of dissolution has been filed with the secretary of state, and subject to section 322B.823, the limited liability company shall cease to carry on its business, except to the extent necessary for the winding up of the business of the limited liability company. The members shall retain the right to revoke the dissolution in accordance with section 322B.823 and the right to remove governors or fill vacancies on the board of governors. The limited liability company existence continues to the extent necessary to wind up the affairs of the limited liability company until the dissolution is revoked or articles of termination are filed with the secretary of state.

Subd. 3. **Certain mergers permitted during winding up.** As part of winding up, the limited liability company may participate in a merger with another limited liability company or with a domestic or foreign corporation under sections 322B.70 to 322B.76, but the dissolved limited liability company shall not be the surviving organization.

Subd. 4. **Remedies continued.** The filing with the secretary of state of a notice of dissolution does not affect any remedy in favor of the limited liability company or any remedy against it or its governors, managers, or members in those capacities, except as provided in section 322B.816, 322B.82, or 322B.863.

#### **322B.813 PROCEDURE IN WINDING UP.**

Subdivision 1. **Procedures to be followed where winding up accomplished by merger.** If the business of the limited liability company is wound up and terminated by merging the dissolved limited liability company into a successor organization:

(1) the procedures stated in sections 322B.70 to 322B.76 must be followed;

(2) sections 322B.816 to 322B.823 and 322B.863 to 322B.866 do not apply; and

(3) once the merger is effective, a creditor or claimant of the terminated limited liability company, and all those claiming through or under the creditor or claimant, are barred from suing the terminated limited liability company on that claim or otherwise realizing upon or enforcing it against the terminated limited liability company, but the creditor, claimant, and those claiming under the creditor and claimant, may, if not otherwise barred by law, assert their claims against the surviving organization of the merger.

Subd. 2. **Procedures to be followed otherwise.** If the business of the limited liability company is to be wound up and terminated other than by merging the dissolved limited liability

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company into a successor organization, the procedures stated in subdivisions 3 to 5 must be followed.

Subd. 3. **Collection and payment.** When a notice of dissolution has been filed with the secretary of state, the board of governors, or the managers acting under the direction of the board of governors, shall proceed as soon as possible:

(1) to give notice to creditors and claimants under section 322B.816 or to proceed under section 322B.82;

(2) to collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and

(3) except as provided in sections 322B.816, 322B.82, and 322B.863, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 322B.873.

Subd. 4. **Transfer of assets.** Notwithstanding section 322B.77, when a notice of dissolution has been filed with the secretary of state, the governors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolved limited liability company without a vote of the members.

Subd. 5. **Distribution to members.** All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the limited liability company must be distributed to the members in accordance with sections 322B.52 and 322B.873.

**322B.816 WINDING UP PROCEDURE FOR LIMITED LIABILITY COMPANIES THAT GIVE NOTICE TO CREDITORS AND CLAIMANTS.**

Subdivision 1. **When permitted and how given.** When a notice of dissolution has been filed with the secretary of state, and the business of the limited liability company is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under section 322B.81, subdivision 3, then the limited liability company may give notice of the filing to each creditor of and claimant against the limited liability company known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in a legal newspaper in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to section 322B.03, subdivision 32.

Subd. 2. **Required contents.** The notice to creditors and claimants must contain:

(1) a statement that the limited liability company has dissolved and is in the process of winding up its affairs;

(2) a statement that the limited liability company has filed with the secretary of state a notice of dissolution;

(3) the date of filing the notice of dissolution;

(4) the address of the office to which written claims against the limited liability company must be presented; and

(5) the date by which all the claims must be received, which must be the later of 90 days after published notice or, with respect to a particular known creditor or claimant, 90 days after the date on which written notice was given to that creditor or claimant. Published notice is considered given on the date of first publication for the purpose of determining this date.

Subd. 4. **Claims against limited liability companies that give notice.** (a) A limited liability company that gives notice to creditors and claimants has 30 days from the receipt of each claim filed according to the procedures set forth by the limited liability company on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is considered accepted.

(b) A creditor or claimant to whom notice is given and whose claim is rejected by the limited liability company has 60 days from the date of rejection, 180 days from the date the limited liability company filed with the secretary of state the notice of dissolution, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.

(c) A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the limited liability company on or before the date set forth in the notice is barred from suing the dissolved limited liability company on that claim or otherwise realizing upon or enforcing it against the dissolved limited liability company, except as provided in section 322B.863.

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(d) A creditor or claimant whose claim is rejected by the limited liability company under paragraph (b) is barred from suing on that claim or otherwise realizing upon or enforcing it whether against the dissolved limited liability company or any successor organization, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in paragraph (b).

Subd. 5. **Articles of termination and when filed.** Articles of termination for a limited liability company that has given notice to creditors and claimants under this section must be filed with the secretary of state after:

(1) the 90-day period in subdivision 2, clause (5), has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

(2) the longest of the periods described in subdivision 4, paragraph (b), has expired and there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision 4, paragraph (b).

Subd. 6. **Contents of articles of termination.** The articles of termination must state:

(1) the last date on which the notice was given and that the payment of all creditors and claimants filing a claim within the 90-day period in subdivision 2, clause (5), has been made or provided for, or the date on which the longest of the periods described in subdivision 4, paragraph (b), expired;

(2) that the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 322B.873, or that adequate provision has been made for that distribution; and

(3) that there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision 4, paragraph (b), or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

### **322B.82 WINDING UP PROCEDURE FOR LIMITED LIABILITY COMPANIES THAT DO NOT GIVE NOTICE TO CREDITORS AND CLAIMANTS.**

Subdivision 1. **Articles of termination and when filed.** Articles of termination for a limited liability company whose business is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under section 322B.81, subdivision 3, and that has not given notice to creditors and claimants in the manner provided in section 322B.816 must be filed with the secretary of state after:

(1) the payment of claims of all known creditors and claimants has been made or provided for; or

(2) at least two years have elapsed from the date of filing the notice of dissolution.

Subd. 2. **Contents.** The articles of termination must state:

(1) if articles of termination are being filed pursuant to subdivision 1, clause (1), that all known debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made for payment or discharge;

(2) that the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 322B.873, or that adequate provision has been made for that distribution; and

(3) that there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

Subd. 3. **Claims against limited liability companies that do not give notice and are not wound up and terminated through merger.** (a) If the limited liability company has paid or provided for all known creditors or claimants at the time articles of termination are filed, a creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it.

(b) If the limited liability company has not paid or provided for all known creditors and claimants at the time articles of termination are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 322B.863.

### **322B.823 REVOCATION OF DISSOLUTION.**

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Subdivision 1. **Generally.** Except as provided in subdivisions 4 and 5, winding up proceedings commenced pursuant to section 322B.806 may be revoked before the filing of articles of termination.

Subd. 2. **Notice to members and approval.** Written notice must be given to every member entitled to vote at a members' meeting within the time and in the manner provided in section 322B.34 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution. The proposed revocation must be submitted to the members at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the dissolution is revoked.

Subd. 3. **Effective date and effect.** Revocation of dissolution is effective when a notice of revocation is filed with the secretary of state. After the notice is filed the limited liability company may cease to wind up and resume business.

Subd. 4. **Restrictions on revocation.** If a dissolved limited liability company is being wound up and terminated by being merged into a successor organization under section 322B.81, subdivision 3, and the plan of merger has been approved under section 322B.72, then the dissolution may be revoked under this section only after the plan of merger has been properly abandoned under section 322B.74.

Subd. 5. **Revocation prohibited.** When dissolution occurs under section 322B.80, subdivision 1, clause (1), (2), or (5), revocation is prohibited.

### **322B.826 EFFECTIVE DATE OF TERMINATION AND CERTIFICATE OF TERMINATION.**

Subdivision 1. **Effective date.** When the articles of termination have been filed with the secretary of state, or on a later date or a later time each within 30 days after filing if the articles of termination so provide, the limited liability company is terminated.

Subd. 2. **Certificate.** The secretary of state shall issue to the limited liability company or its legal representative a certificate of termination that contains:

- (1) the name of the limited liability company;
- (2) the date the termination was filed with the secretary of state; and
- (3) a statement that the limited liability company is terminated at the effective date of the termination.

### **322B.83 SUPERVISED WINDING UP AND TERMINATION FOLLOWING A NONJUDICIAL DISSOLUTION.**

After an event of dissolution has occurred and before a certificate of termination has been issued, the limited liability company or, for good cause shown, a member or creditor may apply to a court within the county in which the registered office of the limited liability company is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 322B.833 to 322B.863.

### **322B.833 JUDICIAL INTERVENTION AND EQUITABLE REMEDIES, DISSOLUTION, AND TERMINATION.**

Subdivision 1. **When permitted.** A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:

- (1) in a supervised winding up and termination pursuant to section 322B.83;
- (2) in an action by a member when it is established that:
  - (i) the governors or the persons having the authority otherwise vested in the board of governors are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;
  - (ii) the governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members or governors of any limited liability company, or as managers or employees of a closely held limited liability company;
  - (iii) the members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;
  - (iv) the limited liability company assets are being misapplied or wasted; or



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- (v) an event of dissolution has occurred under section 322B.80, subdivision 1, clause (1), (4) or (5) but the limited liability company is not acting to wind up its affairs;
- (3) in an action by a creditor when:
  - (i) the claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or
  - (ii) the limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or
- (4) in an action by the attorney general to dissolve the limited liability company in accordance with section 322B.843 when it is established that a decree of termination is appropriate.

**Subd. 2. Buy-out on motion.** In an action under subdivision 1, clause (2), in which one or more of the circumstances described in that clause is established, the court may, upon motion of a limited liability company or a member, order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to either the limited liability company or the moving members, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

The purchase price of any membership interest so sold must be the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization or a member control agreement states a price for the redemption or buy-out of membership interests, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

Within five days after the entry of the order, the limited liability company shall provide each selling member with the information it is required to provide under section 322B.386, subdivision 5, paragraph (a).

If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall determine the fair value of the membership interests under the provisions of section 322B.386, subdivision 7, may allow interest or costs as provided in section 322B.386, subdivisions 1 and 8, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.

The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of a membership interest under this subdivision and provided that the limited liability company or the moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member shall no longer have any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded.

**Subd. 3. Condition of limited liability company.** In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but shall not refuse to order any particular form of relief solely on the ground that the limited liability company has accumulated or current operating profits.

**Subd. 4. Considerations in granting relief involving closely held limited liability companies.** In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the duty that all members in a closely held limited liability company owe one another to act in an honest, fair, and reasonable manner in the operation of the limited liability company and the reasonable expectations of all members as they exist at the inception and develop during the course of the members' relationship with the limited liability company and with each other. For purposes of this section, any written agreements, including employment agreements and buy-sell agreements, between or among members or between or among one or more members and the limited liability company are presumed to reflect the parties' reasonable expectations concerning matters dealt with in the agreements.

**Subd. 5. Considerations as to dissolution.** In determining what relief to order, the court shall take into account that relief that results in the termination of a member's membership interest may cause dissolution of the limited liability company. If the court orders relief that results in dissolution of the limited liability company, the court shall make appropriate orders providing for the winding up and termination of the dissolved limited liability company.

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Subd. 6. **Liquidation remedy.** In deciding whether to order winding up through liquidation, the court shall consider whether lesser relief suggested by one or more parties, or provided in a member control agreement, such as any form of equitable relief, or a buy-out or partial liquidation coupled with the continuation of the business of the dissolved limited liability company through a successor organization, would be adequate to permanently relieve the circumstances established under subdivision 1, clause (2) or (3). Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

Subd. 7. **Expenses.** If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

Subd. 8. **Venue and parties.** Proceedings under this section must be brought in a court within the county in which the registered office of the limited liability company is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

### **322B.836 JUDICIAL INTERVENTION PROCEDURES.**

Subdivision 1. **Action before hearing.** In proceedings under section 322B.833, the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the limited liability company assets wherever situated, and carry on the business of the limited liability company until a full hearing can be held.

Subd. 2. **Action after hearing.** After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the limited liability company assets, including all amounts owing to the limited liability company by persons who have made contribution agreements and by persons who have made contributions by means of enforceable promises of future performance. In addition to the powers set forth in chapter 576, a receiver has authority, subject to the order of the court, to continue the business of the limited liability company and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the limited liability company either at public or private sale.

Subd. 3. **Discharge of obligations upon liquidation.** If the court determines that the limited liability company is to be dissolved with winding up to be accomplished by liquidation, then the assets of the limited liability company or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the order of priority set forth in section 576.51.

Subd. 4. **Remainder to members.** After payment of the expenses of receivership and claims of creditors duly proved under subdivision 3, the remaining assets, if any, must be distributed to the members in accordance with section 322B.873, subdivision 1.

### **322B.84 QUALIFICATIONS OF RECEIVERS AND POWERS.**

Subdivision 1. **Qualifications.** Any person qualified under section 576.26 may be appointed as a receiver. A receiver shall give bond as required by section 576.27.

Subd. 2. **Powers.** A receiver may sue and defend all actions as receiver of the limited liability company. The court appointing the receiver has exclusive jurisdiction over the limited liability company, the receiver, and all receivership property pursuant to section 576.23.

### **322B.843 ACTION BY ATTORNEY GENERAL.**

Subdivision 1. **When permitted.** A limited liability company may be involuntarily dissolved, wound up and terminated by a decree of a court in this state in an action filed by the attorney general when it is established that:

- (1) the articles of organization were procured through fraud;
- (2) the limited liability company was organized for a purpose not permitted by section 322B.10;
- (3) the limited liability company failed to comply with the requirements of sections 322B.10 to 322B.18 essential to organization under this chapter;
- (4) the limited liability company has flagrantly violated a provision of this chapter, or has violated a provision of this chapter more than once, or has violated more than one provision of this chapter; or
- (5) the limited liability company has acted, or failed to act, in a manner that constitutes surrender or abandonment of the limited liability company privileges or enterprise.

Subd. 2. **Notice to limited liability company and correction.** An action must not be commenced under this section until 30 days after notice to the limited liability company by the

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attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the limited liability company has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles of organization, a member control agreement, or the bylaws or by performance of or abstention from the act, the attorney general shall give the limited liability company 30 additional days in which to effect the correction before filing the action.

### **322B.846 FILING CLAIMS IN JUDICIAL INTERVENTION PROCEEDINGS.**

Subdivision 1. **Judicial intervention proceedings.** In proceedings referred to in section 322B.833, the court may require all creditors and claimants of the limited liability company to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.

Subd. 2. **Filing of claims.** If the court requires the filing of claims, it shall fix a date not less than 120 days from the date of the order as the last day for the filing of claims, and shall prescribe the notice of the fixed date that shall be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the limited liability company.

### **322B.85 DISCONTINUANCE OF PROCEEDINGS FOR WINDING UP THROUGH LIQUIDATION.**

If the court has determined that the limited liability company is to be dissolved, with winding up to be accomplished by liquidation, and subsequently the court determines that the grounds for dissolution no longer exist or that the grounds for ordering winding up through liquidation no longer exist, the court shall make whatever orders are just and reasonable under the circumstances.

### **322B.853 DECREE OF TERMINATION.**

Subdivision 1. **When entered.** If the court has ordered a dissolution, or the court has intervened under section 322B.833, subdivision 1, clause (1), or has ordered or caused a dissolution under any other provision of that subdivision, then after the affairs of the dissolved limited liability company have been appropriately wound up the court shall enter a decree terminating the dissolved limited liability company.

Subd. 2. **Effective date.** When the decree terminating the limited liability company has been entered, the limited liability company is terminated.

### **322B.856 FILING DECREE.**

After the court enters a decree terminating a limited liability company, the court administrator shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state shall not charge a fee for filing the decree.

### **322B.86 DEPOSIT WITH COMMISSIONER OF MANAGEMENT AND BUDGET OF AMOUNT DUE CERTAIN MEMBERS.**

Upon termination of a limited liability company, the portion of the assets distributable to a member who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, must be reduced to money and deposited with the commissioner of management and budget. The amount deposited is appropriated to the commissioner of management and budget and must be paid over to the member or a legal representative, upon proof satisfactory to the commissioner of management and budget of a right to payment.

### **322B.863 CLAIMS BARRED AND EXCEPTIONS.**

Subdivision 1. **Claims barred.** Except as provided in this section, a creditor or claimant whose claims are barred under section 322B.816, 322B.82, or 322B.846 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of termination proceedings, and all those claiming through or under the creditor or claimant.

Subd. 2. **Claims reopened.** At any time within one year after articles of termination have been filed with the secretary of state pursuant to section 322B.816 or 322B.82, subdivision 1,

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clause (2), or a decree of termination has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

- (1) against the limited liability company to the extent of undisposed assets; or
- (2) if the undisposed assets are not sufficient to satisfy the claim, against a member, whose liability is limited to a portion of the claim that is equal to the portion of the distributions to members in liquidation or termination received by the member, but in no event may a member's liability exceed the amount that the member actually received in the termination.

Subd. 3. **Obligations incurred during termination proceedings.** All known contractual debts, obligations, and liabilities incurred in the course of winding up and terminating the limited liability company's affairs must be paid or provided for by the limited liability company before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the managers and governors of the limited liability company who are responsible for, but who fail to cause, the limited liability company to pay or make provision for payment of the debts, obligations, and liabilities or against members to the extent permitted under section 322B.56. This subdivision does not apply to dissolution and termination under the supervision or order of a court.

Subd. 4. **Statutory homeowner warranty claims preserved.** The statutory warranties provided under section 327A.02, and any contribution or indemnity claim arising from the breach of those warranties, are not affected by the dissolution under this chapter of a vendor or home improvement contractor.

**322B.866 RIGHT TO SUE OR DEFEND AFTER TERMINATION.**

After a limited liability company has been terminated, any of its former managers, governors, or members may assert or defend, in the name of the limited liability company, any claim by or against the limited liability company.

**322B.87 OMITTED ASSETS.**

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to members may be transferred by a court in this state.

**322B.873 DISPOSITION OF ASSETS UPON DISSOLUTION.**

Subdivision 1. **Disposition upon liquidation.** Subject to subdivision 4, except when the dissolved limited liability company is being wound up and terminated under section 322B.81, subdivision 3, the assets of the dissolved limited liability company must be disposed of to satisfy liabilities according to the following priorities:

(1) to creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 322B.51 or termination distributions under section 322B.50;

(2) unless otherwise provided in the articles of organization or a member control agreement, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 322B.50 or 322B.51; and

(3) unless otherwise provided in the articles of organization or a member control agreement, to members first for a return of their contributions, as restated from time to time under section 322B.41, and secondly respecting their membership interests in the proportions in which the members share in distributions.

Subd. 4. **Damages and offsets for wrongful dissociation and breach of a member control agreement.** A member who wrongfully resigns or retires is liable to the limited liability company for any damages caused by the member's wrongful resignation or retirement. Any member who breaches a member control agreement is liable to the limited liability company for any damages caused by the breach. Any payment due a member under this section, including payments, if any, to dissenters due to winding up merger under section 322B.81, subdivision 3, is subject to offset these damages.

**322B.876 SERVICE OF PROCESS ON LIMITED LIABILITY COMPANY.**

Subdivision 1. **Who may be served.** A process, notice, or demand required or permitted by law to be served upon a limited liability company may be served either upon the registered agent,

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if any, of the limited liability company named in the articles of organization, or upon a manager of the limited liability company, or upon the secretary of state as provided in section 5.25.

### **322B.88 WHEN A MEMBER IS NOT A PROPER PARTY.**

A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company except when:

- (1) the object of the proceeding is to determine or enforce a member's right against, or liability to, the limited liability company; or
- (2) the proceeding involves a claim of personal liability or responsibility of that member and that claim has some basis other than the member's status as a member.

### **322B.883 STATE INTERESTED IN PROCEEDINGS.**

If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested in the proceeding or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

### **322B.90 GOVERNING LAW.**

Subdivision 1. **State of organization.** Subject to the Constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members. A foreign limited liability company may not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

Subd. 2. **Limitations.** 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.

### **322B.905 NAME.**

A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic limited liability company, whether or not the name is the name under which it is authorized in its jurisdiction of organization.

### **322B.91 APPLICATION FOR CERTIFICATE OF AUTHORITY.**

Subdivision 1. **Application information.** Before transacting business in this state, a foreign limited liability company shall obtain a certificate of authority. An applicant for the certificate shall file with the secretary of state an application executed by an authorized person and setting forth:

- (1) the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;
- (2) the jurisdiction of its organization;
- (3) the name and business address of the proposed registered agent in this state, which agent shall be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state;
- (4) the address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal place of business of the foreign limited liability company;
- (5) the date the foreign limited liability company expires in the jurisdiction of its organization; and
- (6) that the foreign limited liability company has complied with the organizational laws in the jurisdiction of its organization.

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Subd. 2. **Fees.** The application must be accompanied by payment of \$185, which includes a \$150 initial license fee in addition to the \$35 filing fee required by section 322B.03, subdivision 18.

**322B.915 ISSUANCE OF CERTIFICATE OF AUTHORITY.**

Subdivision 1. **Issuance of certificate.** If the secretary of state finds that an application for a certificate of authority conforms to law and all fees have been paid, the secretary shall:

- (1) endorse on the application the word "Filed" and the date of the filing of it;
- (2) file the original of the application; and
- (3) return the original of the application to the person who filed it with a certificate of authority issued by the secretary of state.

Subd. 2. **Effective date of certificate.** A certificate of authority issued under this section is effective from the date the application is filed with the secretary of state accompanied by the payment of the requisite fees.

**322B.92 AMENDMENTS TO THE CERTIFICATE OF AUTHORITY.**

If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the secretary of state:

- (1) in the case of a change in its name, a termination or a merger, a statement to that effect authenticated by the proper officer of the foreign limited liability company;
- (2) in the case of a change in the name or address of the registered agent required to be maintained by section 322B.925, an amendment to the certificate of authority signed by an authorized person; or
- (3) in the case of an election, rescission, or change in the specification of professional services under section 319B.04, a notice which:
  - (i) states the election, rescission, or change in specification;
  - (ii) has been approved in accordance with the foreign limited liability company's generally applicable governing law, as that term is defined in section 319B.02, subdivision 8; and
  - (iii) has been signed on behalf of the foreign limited liability company.The fee for filing the document is the same as for filing an amendment.

**322B.925 REGISTERED AGENT AND CERTAIN REPORTS.**

A foreign limited liability company authorized to transact business in this state shall:

- (1) appoint and continuously maintain a registered agent in the same manner as provided in section 322B.13; or
- (2) file a report upon any change in the name or business address of its registered agent in the same manner as provided in section 322B.135, subdivision 3.

**322B.93 CERTIFICATE OF WITHDRAWAL.**

A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, which must set forth:

- (1) the name of the limited liability company and the state or country under the laws of which it is organized;
- (2) that the limited liability company is not transacting business in this state;
- (3) that the limited liability company surrenders its authority to transact business in this state;
- (4) that the limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the limited liability company was authorized to transact business in this state may be made on the limited liability company by service upon the secretary of state; and
- (5) a post office address to which a person may mail a copy of any process against the limited liability company.

The filing with the secretary of state of a certificate of termination or a certificate of merger if the limited liability company is not the surviving organization from the proper officer of the

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state or country under the laws of which the limited liability company is organized constitutes a valid application of withdrawal and the authority of the limited liability company to transact business in this state shall cease upon filing of the certificate.

### **322B.935 REVOCATION OF CERTIFICATE OF AUTHORITY.**

Subdivision 1. **Revocation procedure.** The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of any of these events:

(1) the foreign limited liability company has failed to appoint and maintain a registered agent as required by this chapter and section 5.36, file a report upon any change in the name or business address of the registered agent, or file in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 322B.92; or

(2) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the foreign limited liability company pursuant to this chapter.

Subd. 2. **Revocation notice.** No certificate of authority of a foreign limited liability company shall be revoked by the secretary of state unless:

(1) the secretary has attempted to provide the foreign limited liability company not less than 30 days' notice; and

(2) during the 30-day period, the foreign limited liability company has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

Subd. 3. **Effective date.** Upon the expiration of 30 days after the secretary of state attempts to provide notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue and file a certificate of revocation and shall mail the certificate to the address of the principal place of business or the office required to be maintained in the jurisdiction of organization of the foreign limited liability company.

### **322B.94 TRANSACTION OF BUSINESS WITHOUT CERTIFICATE OF AUTHORITY.**

Subdivision 1. **Access to courts.** A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.

Subd. 2. **Contracts and defense suits.** The failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

Subd. 3. **Designated registered agent.** A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.

Subd. 4. **Fees.** A foreign limited liability company that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that limited liability company had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

Subd. 5. **Civil penalty.** A foreign limited liability company that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, not to exceed \$5,000. Each governor or, in the absence of governors, each member or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed \$1,000.

Subd. 6. **Injunction.** The civil penalties set forth in subdivision 5 may be recovered in an action brought within the District Court for Ramsey County by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, governors, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company

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must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this chapter.

Subd. 7. **Member limited liability.** A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

#### **322B.945 TRANSACTIONS NOT CONSTITUTING TRANSACTING BUSINESS.**

Subdivision 1. **Excluded acts.** The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter:

- (1) maintaining, defending, or settling any proceeding;
- (2) holding meetings of its members or carrying on any other activities concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (8) securing or collecting debts or enforcing mortgages, and security interests in property securing the debts;
- (9) holding, protecting, renting, maintaining and operating real or personal property in this state so acquired;
- (10) selling or transferring title to property in this state to any person; or
- (11) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like manner.

Subd. 2. **Effect of personal jurisdiction.** The term "transacting business" as used in this section has no effect on personal jurisdiction under section 543.19.

Subd. 3. **Ownership of income-producing property.** For purposes of this section, any foreign limited liability company that owns income-producing real or tangible personal property in this state, other than property exempted under subdivision 1, will be considered transacting business in this state.

Subd. 4. **Scope of excluded transactions definitions.** The list of activities in subdivision 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

#### **322B.95 ACTION BY ATTORNEY GENERAL.**

The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

#### **322B.955 SERVICE OF PROCESS.**

Service of process on a foreign limited liability company must be as provided in section 5.25.

#### **322B.960 ANNUAL RENEWAL.**

Subdivision 1. **Annual renewal form.** (a) The secretary of state may send annually to each limited liability company, using the information provided by the limited liability company pursuant to section 5.002 or 5.34 or the articles of organization, a notice announcing the need to file the annual renewal and informing the limited liability company that the annual renewal may be filed online and that paper filings may also be made, and informing the limited liability company that failing to file the annual renewal will result in an administrative termination of the limited liability company or the revocation of the authority of the limited liability company to do business in Minnesota.

(b) Each calendar year beginning in the calendar year following the calendar year in which a limited liability company files articles of organization, a limited liability company must



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file with the secretary of state by December 31 of each calendar year a renewal containing the items required by section 5.34.

Subd. 4. **Penalty.** (a) A domestic limited liability company that has not filed a renewal pursuant to this section is administratively terminated. The secretary of state shall issue a certificate of administrative termination which must be filed in the office of the secretary of state. The secretary of state must also make available in an electronic format the names of the terminated limited liability companies.

(b) A non-Minnesota limited liability company that has not filed a renewal pursuant to this section shall have its authority to do business in Minnesota revoked. The secretary of state must issue a certificate of revocation which must be filed in the Office of the Secretary of State. The secretary of state must also make available in an electronic format the names of the revoked non-Minnesota limited liability companies.

Subd. 5. **Reinstatement.** If a limited liability company is administratively terminated or has its authority to do business in Minnesota revoked, it may retroactively reinstate its existence or authority to do business by filing a single annual renewal and paying a \$25 fee.

(a) For a domestic limited liability company, filing the annual renewal with the secretary of state:

(1) returns the limited liability company to active status as of the date of the administrative termination;

(2) validates contracts or other acts within the authority of the articles, and the limited liability company is liable for those contracts or acts; and

(3) restores to the limited liability company all assets and rights of the limited liability company and its members to the extent they were held by the limited liability company and its members before the administrative termination occurred, except to the extent that assets or rights were affected by acts occurring after the termination, sold, or otherwise distributed after that time.

(b) For a non-Minnesota limited liability company, filing the annual renewal restores the limited liability company's ability to do business in Minnesota and the rights and privileges which accompany that authority.

### **322B.975 NONPROFIT LIMITED LIABILITY COMPANIES.**

Subdivision 1. **Status as nonprofit limited liability company.** A limited liability company is a nonprofit limited liability company if it is organized under or governed by this chapter and its articles of organization state that it is a nonprofit limited liability company governed by this section. The status of a nonprofit limited liability company under this chapter is not determinative of its tax treatment.

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

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

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

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

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

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

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

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

Subd. 5. **Provisions of chapter 317A applicable to nonprofit limited liability companies.**

(a) Section 317A.161, subdivision 11, applies to a nonprofit limited liability company as if it were a nonprofit corporation governed by chapter 317A. Section 317A.251 applies to a governor as if the governor were a director of a nonprofit corporation, and section 322B.663 does not apply.

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

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

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

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

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

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