

(k) acting as a medical review agent under section 256B.04, subdivision 15, or 256D.03, subdivision 7, paragraph (b);

(l) providing recommendations on the medical necessity of a health service, or the relevant prevailing community standard for a health service;

(m) providing quality assurance as required by United States Code, title 42, sections 1396r(b)(1)(b) and 1395i-3(b)(1)(b) of the Social Security Act;

(n) providing information to group purchasers of health care services when that information was originally generated within the review organization for a purpose specified by this subdivision; or

(o) providing information to other, affiliated or nonaffiliated review organizations, when that information was originally generated within the review organization for a purpose specified by this subdivision, and as long as that information will further the purposes of a review organization as specified by this subdivision.

Presented to the governor April 19, 1999

Signed by the governor April 22, 1999, 9:28 a.m.

## CHAPTER 85—H.F.No. 836

*An act relating to business organizations; regulating business corporations; defining terms; modifying the authority to grant restricted stock; regulating take-over offers; providing for name changes in certain circumstances; regulating mergers and exchanges; making clarifying and technical changes; removing ambiguities; regulating limited liability companies; eliminating unnecessary provisions; correcting terminology; regulating member control agreements and dissolutions; providing for the duration of certain companies; making conforming changes required by the enactment of the revised Uniform Partnership Act; amending Minnesota Statutes 1998, sections 302A.011, subdivisions 7 and 56; 302A.111, subdivision 5; 302A.181, subdivision 1; 302A.223, subdivision 3; 302A.402, subdivision 3; 302A.405, subdivision 1; 302A.417, subdivision 7; 302A.457, subdivisions 1 and 2; 302A.471, subdivision 1; 302A.613, subdivision 1; 302A.621, subdivisions 1 and 6; 302A.671, subdivision 1; 302A.675, subdivision 2; 319B.02, subdivisions 10, 12, 21, and 22; 319B.04, subdivisions 2 and 3; 319B.08, subdivision 1; 319B.10, subdivision 2; 319B.11, subdivisions 3, 4, and 8; 322A.02; 322A.87; 322A.88; 322B.03, subdivisions 12, 30, 44, and 45; 322B.115, subdivisions 1, 2, and 3; 322B.155; 322B.20, subdivisions 1 and 2; 322B.30, subdivision 2; 322B.306; 322B.31, subdivision 3; 322B.313, subdivisions 2, 3, and 7; 322B.323, subdivision 2; 322B.326; 322B.33, subdivisions 1 and 4; 322B.333, subdivisions 1 and 3; 322B.336, subdivisions 1 and 3; 322B.34, subdivisions 2 and 3; 322B.343, subdivisions 1 and 2; 322B.346; 322B.35, subdivision 1; 322B.353; 322B.356, subdivisions 1, 2, and 3; 322B.363, subdivisions 2 and 3; 322B.366, subdivision 1; 322B.37; 322B.383, subdivision 1; 322B.386, subdivisions 1, 2, 4, and 5; 322B.40, subdivisions 1, 5, and 6; 322B.41, subdivisions 3 and 4; 322B.42, subdivision 5; 322B.43, subdivisions 1 and 3; 322B.50; 322B.51; 322B.52; 322B.54, subdivision 1; 322B.56, subdivision 1; 322B.603; 322B.606, subdivision 1; 322B.61; 322B.613; 322B.616; 322B.623; 322B.626; 322B.63, subdivision 1; 322B.636, subdivisions 1 and 3; 322B.64; 322B.643, subdivisions 1, 3, and 4; 322B.646; 322B.65; 322B.653; 322B.656, subdivision 1; 322B.66, subdivision 2; 322B.663, subdivision 4; 322B.666, subdivision 1; 322B.673, subdivisions 1 and 2; 322B.676; 322B.686, subdivision 3; 322B.689; 322B.699, subdivision 4; 322B.72, subdivisions 1 and 2; 322B.80, subdivision 1;*

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*322B.813, subdivision 3; 322B.816, subdivision 4; 322B.833, subdivisions 2, 5, and 6; 322B.843, subdivision 2; 322B.873, subdivisions 1 and 4; 323A.10-01; and 323A.11-02; repealing Minnesota Statutes 1998, sections 322B.03, subdivisions 4, 5, 9, and 16; 322B.363, subdivision 8; 322B.366, subdivision 2; 322B.816, subdivision 3; and 322B.873, subdivisions 2 and 3.*

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

## ARTICLE 1

### BUSINESS CORPORATIONS

Section 1. Minnesota Statutes 1998, section 302A.011, subdivision 7, is amended to read:

Subd. 7. **CONSTITUENT CORPORATION.** "Constituent corporation" means a domestic or corporation or a foreign corporation that is a party to a merger or exchange:

(1) in a merger is either the surviving corporation or a corporation that is merged into the surviving organization; or

(2) in an exchange is either the acquiring corporation or a corporation whose shares are acquired by the acquiring organization.

Sec. 2. Minnesota Statutes 1998, section 302A.011, subdivision 56, is amended to read:

Subd. 56. **CONSTITUENT ORGANIZATION.** "Constituent organization" means a corporation, foreign corporation, or a domestic limited liability company or foreign limited liability company that is a party to a merger or an exchange:

(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.

Sec. 3. Minnesota Statutes 1998, section 302A.111, subdivision 5, is amended to read:

Subd. 5. **OPTIONAL PROVISIONS: GENERALLY.** The articles may contain other provisions not inconsistent with section 302A.201 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.

Sec. 4. Minnesota Statutes 1998, section 302A.181, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with section 302A.201 or any other provision of law or the articles.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 5. Minnesota Statutes 1998, section 302A.223, subdivision 3, is amended to read:

Subd. 3. **REMOVAL BY SHAREHOLDERS.** Except as provided in subdivision 4, any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number a majority of the voting power of the all shares of the classes or series the director represents sufficient to elect them, except as provided in subdivision 4 entitled to vote at an election of directors; provided that, if a director has been elected solely by the holders of a class or series of shares, as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of all shares of that class or series entitled to vote at an election of that director.

Sec. 6. Minnesota Statutes 1998, section 302A.402, subdivision 3, is amended to read:

Subd. 3. **BY ACTION OF BOARD ALONE; FILING OF ARTICLES OF AMENDMENT.** (a) Subject to the restrictions provided in subdivision 2 or any restrictions provision in the articles that states that section 302A.402, subdivision 3, does not apply, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 302A.135 and 302A.137. In effecting a division or combination under this subdivision, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

(b) If a division or combination that includes an amendment of the articles is effected under this subdivision, then articles of amendment must be prepared that contain the information required by section 302A.139 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares of any class or series that remains unissued after the division or combination exceeding the percentage of authorized shares of that class or series that were unissued before the division or combination.

Sec. 7. Minnesota Statutes 1998, section 302A.405, subdivision 1, is amended to read:

Subdivision 1. **CONSIDERATION; PROCEDURE.** Subject to any restrictions in the articles:

(a) Shares may be issued for any consideration, including, without limitation, money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or to be rendered to the corporation under a written agreement, as authorized by resolution approved by the affirmative vote of the directors required by section 302A.237, or, if provided for in the articles, approved by the affirmative vote of the shareholders required by section 302A.437, establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined; and

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(b) A corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or, subject to authorization of share dividends, divisions, and combinations according to section 302A.402, issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. No shares of a class or series, shares of which are then outstanding, shall be issued to the holders of shares of another class or series (except in exchange for or in conversion of outstanding shares of the other class or series), unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

Sec. 8. Minnesota Statutes 1998, section 302A.417, subdivision 7, is amended to read:

Subd. 7. **UNCERTIFICATED SHARES.** Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its shares will be uncertificated shares. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates. This information is not required to be sent to the new shareholder by a publicly held corporation that has adopted a system of issuance, recordation, and transfer of its shares by electronic or other means not involving an issuance of certificates if the system complies with section 174 17A of the Securities Exchange Act of 1934. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

Sec. 9. Minnesota Statutes 1998, section 302A.457, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZED.** A written agreement among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subdivision 2. The agreement may also include as parties persons who are neither shareholders nor subscribers.

Sec. 10. Minnesota Statutes 1998, section 302A.457, subdivision 2, is amended to read:

Subd. 2. **METHOD OF APPROVAL; ENFORCEABILITY; COPIES.** (a) A written agreement ~~among persons as~~ described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among ~~them~~ the shareholders and subscribers, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders and others by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who, on the date the agreement first becomes effective, are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting

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shares, to be issued. A written agreement as described in subdivision 1 may provide for its amendment through nonunanimous means.

(b) The agreement is enforceable by the persons described in subdivision 1 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 agreement. A copy of the agreement shall be filed with the corporation. The existence and location of a copy of the agreement shall be noted conspicuously on the face or back of each certificate for shares issued by the corporation and included in information sent to the holders of uncertificated shares according to section 302A.417, subdivision 7.

(c) A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.

Sec. 11. Minnesota Statutes 1998, section 302A.471, subdivision 1, is amended to read:

Subdivision 1. **ACTIONS CREATING RIGHTS.** A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) An amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder in that it:

(1) alters or abolishes a preferential right of the shares;

(2) creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(3) alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;

(4) excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; except that an amendment to the articles of an issuing public corporation that provides that section 302A.671 does not apply to a control share acquisition does not give rise to the right to obtain payment under this section;

(b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation, but not including a transaction permitted without shareholder approval in section 302A.661, subdivision 1, or a disposition in dissolution described in section 302A.725, subdivision 2, 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 shareholders in accordance with their respective interests within one year after the date of disposition;

(c) A plan of merger, whether under this chapter or under chapter 322B, to which the corporation is a party constituent organization, except as provided in subdivision 3;

(d) A plan of exchange, whether under this chapter or under chapter 322B, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan; or

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(e) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

Sec. 12. Minnesota Statutes 1998, section 302A.613, subdivision 1, is amended to read:

Subdivision 1. **BOARD APPROVAL; NOTICE TO SHAREHOLDERS.** A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and shall then be submitted at a regular or a special meeting to the shareholders of (i) each constituent corporation, in the case of a plan of merger, and (ii) the corporation whose shares will be acquired by the acquiring organization in the exchange, in the case of a plan of exchange. The plan of merger or exchange may require that it be submitted to the shareholders whether or not the board of directors determines at any time after the board of directors' initial approval of the plan that the plan is no longer advisable and recommends that the shareholders reject it. If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this section, written notice shall be given to every shareholder of a corporation, 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 302A.435 for notice of meetings of shareholders. The written notice shall 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 shall be included in or enclosed with the notice. If the merger or exchange is with a domestic or foreign limited liability company, the plan of merger or exchange must also be approved in the manner required by the laws of the state under which the limited liability company is organized.

Sec. 13. Minnesota Statutes 1998, section 302A.621, subdivision 1, is amended to read:

Subdivision 1. **WHEN AUTHORIZED; CONTENTS OF PLAN.** A parent owning at least 90 percent of the outstanding shares of each class and series of a subsidiary directly, or indirectly through related corporations, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related corporations, without a vote of the shareholders of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors of the parent present shall set forth a plan of merger that contains:

(a) The name of the subsidiary or subsidiaries, the name of the parent and the name of the surviving corporation;

(b) The manner and basis of converting the shares of the subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another corporation or, in whole or in part, into money or other property;

(c) If the parent is a constituent corporation but is not the surviving corporation in the merger, a provision for the pro rata issuance of shares of the surviving corporation to the holders of shares of the parent on surrender of any certificates for shares of the parent; and

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(d) If the surviving corporation is a subsidiary, a statement of any amendments to the articles of the surviving corporation that will be part of the merger.

If the parent is a constituent corporation and the surviving corporation in the merger, it may change its corporate name, without a vote of its shareholders, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the directors of the parent present. Upon the effective date of the merger, the name of the parent shall be changed.

If the parent is a constituent corporation but is not the surviving corporation in the merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 302A.613 if the parent is a domestic corporation or in accordance with the laws under which it is incorporated if the parent is a foreign corporation.

Sec. 14. Minnesota Statutes 1998, section 302A.621, subdivision 6, is amended to read:

**Subd. 6. RIGHTS OF DISSENTING SHAREHOLDERS.** In the event all of the stock of one or more domestic subsidiaries that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenters' rights under ~~section~~ sections 302A.471, (without regard to section 302A.471, subdivision 3) and 302A.473. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenters' rights under section 302A.471, subdivision 1, paragraph (a), if the articles of incorporation of the surviving corporation constituted an amendment to the articles of incorporation of the parent, that shareholder of the parent has dissenters' rights as provided under sections 302A.471 and 302A.473. Except as provided in this subdivision, sections 302A.471 and 302A.473 do not apply to any merger effected under this section.

Sec. 15. Minnesota Statutes 1998, section 302A.671, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION.** (a) Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section applies to a control share acquisition. A shareholder's proposal to amend the corporation's articles or bylaws to cause this section to be inapplicable to the corporation requires the vote set forth in subdivision 4a, paragraph (b), in order for it to be effective, unless it is approved by a committee of the board comprised solely of directors who:

(1) are neither officers nor employees of, nor were during the five years preceding the formation of the committee officers or employees of, the corporation or a related organization;

(2) are neither acquiring persons nor affiliates or associates of an acquiring person;

(3) were not nominated for election as directors by an acquiring person or an affiliate or associate of an acquiring person; and

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(4) were directors at the time an acquiring person became an acquiring person or were nominated, elected, or recommended for election as directors by a majority of those directors.

(b) The shares of an issuing public corporation acquired by an acquiring person in a control share acquisition that exceed the threshold of voting power of any of the ranges specified in subdivision 2, paragraph (d), shall have only the voting rights as shall be accorded to them pursuant to subdivision 4a.

Sec. 16. Minnesota Statutes 1998, section 302A.675, subdivision 2, is amended to read:

Subd. 2. **EXCEPTION.** Subdivision 1 does not apply if the proposed acquisition of shares is approved, before the purchase of any shares by the offeror pursuant to the earlier takeover offer, by a committee of the board's disinterested directors before the purchase of any shares by the offeror pursuant to the earlier takeover offer. The provisions of section 302A.673, subdivision 1, paragraph (d), relating to a committee of disinterested directors, apply to this section board, comprised solely of directors who:

(1) neither are officers or employees of, nor were during the five years preceding the formation of the committee officers or employees of, the corporation or a related organization;

(2) are neither the offerors nor affiliates or associates of the offeror;

(3) were not nominated for election as directors by the offeror or an affiliate or associate of the offeror; and

(4) were directors at the time of the first public announcement of the takeover offer or were nominated, elected, or recommended for election as directors by a majority of the directors.

Sec. 17. **EFFECTIVE DATE.**

Sections 1 to 16 are effective the day following final enactment.

## ARTICLE 2

### LIMITED LIABILITY COMPANIES

Section 1. Minnesota Statutes 1998, section 322B.03, subdivision 12, is amended to read:

Subd. 12. **CONSTITUENT ORGANIZATION.** "Constituent organization" means a limited liability company or a ~~domestic or~~ corporation or a foreign corporation that is a party to a merger or an exchange.:

(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.

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Sec. 2. Minnesota Statutes 1998, section 322B.03, subdivision 30, is amended to read:

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.

Sec. 3. Minnesota Statutes 1998, section 322B.03, subdivision 44, is amended to read:

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.

Sec. 4. Minnesota Statutes 1998, section 322B.03, subdivision 45, is amended to read:

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 operating agreement 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.

Sec. 5. Minnesota Statutes 1998, section 322B.115, subdivision 1, is amended to read:

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 30-year period set forth in section 322B.20, subdivision 2.

Sec. 6. Minnesota Statutes 1998, section 322B.115, subdivision 2, is amended to read:

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:

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- (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 operating agreement is vested in the board of governors (section 322B.603);
- (4) a limited liability company must allow cumulative voting for governors (section 322B.63);
- (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 restatement of value of previous contributions is to be determined according to a specified process restated when a new contribution is accepted (section 322B.41, subdivisions 3 and 4);
- (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 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);

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(19) unanimous consent is required for the transfer of governance rights to a person not already a member (section 322B.313, subdivision 2); and

(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)~~(B)~~(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).

Sec. 7. Minnesota Statutes 1998, section 322B.115, subdivision 3, is amended to read:

Subd. 3. **STATUTORY PROVISIONS THAT MAY BE MODIFIED EITHER IN ARTICLES OF ORGANIZATION, A MEMBER CONTROL AGREEMENT, OR IN THE OPERATING AGREEMENT.** 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 operating agreement:

(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);

(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);

(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);

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(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 operating agreement or an act of the board of governors (section 322B.51).

Sec. 8. Minnesota Statutes 1998, section 322B.155, is amended to read:

**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;

(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) change the membership interests of the class or series into the same or a different number of membership interests of another class or series;

(5) 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;

(6) 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;

(7) limit or deny any existing preemptive rights of the membership interests of the class or series; or

(8) cancel or otherwise affect distributions on the membership interests of the class or series.

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Sec. 9. Minnesota Statutes 1998, section 322B.20, subdivision 1, is amended to read:

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.

Sec. 10. Minnesota Statutes 1998, section 322B.20, subdivision 2, is amended to read:

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.

Sec. 11. Minnesota Statutes 1998, section 322B.30, subdivision 2, is amended to read:

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, 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. ~~The statement is not a certificated security as defined in section 336.8-102(1)(a), is not a negotiable instrument, and may not serve as a vehicle by which a transfer of any membership interest may be effected.~~

Sec. 12. Minnesota Statutes 1998, section 322B.306, is amended to read:

**322B.306 TERMINATION OF A MEMBERSHIP INTEREST.**

Subdivision 1. **TERMINATION DEFINED; MEMBER'S POWER TO TERMINATE MEMBERSHIP.** 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;

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(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. A member's resignation or retirement, whether rightful or wrongful, causes dissolution under section 322B.80, subdivision 1, clause (5), unless dissolution is avoided under that clause. A member has no power to transfer all or part of the member's membership interest, except as provided in sections 322B.31 and 322B.313.

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 GOVERNANCE 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 dissolution under section 322B.80, subdivision 1, clause (5), is avoided under that clause, then 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 dissolution under section 322B.80, subdivision 1, clause (5), is not avoided under that clause 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 then:

(1) if dissolution avoidance consent is obtained, 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; and

(2) if dissolution avoidance consent is not obtained, section 322B.873 applies.

Sec. 13. Minnesota Statutes 1998, section 322B.31, subdivision 3, is amended to read:

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

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member control agreement, in the operating agreement, 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, operating agreement, 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.

Sec. 14. Minnesota Statutes 1998, section 322B.313, subdivision 2, is amended to read:

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. 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 this subdivision. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by this subdivision. If a secured party has a security interest in both a 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 consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 15. Minnesota Statutes 1998, section 322B.313, subdivision 3, is amended to read:

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 and the written consent required under subdivision 2 also constitutes the dissolution avoidance consent necessary to avoid dissolution that would otherwise ensue under section 322B.80, subdivision 1, clause (5), on account of the assignor ceasing to be a member if the consent required to avoid dissolution is not greater than the consent required under subdivision 2.

Sec. 16. Minnesota Statutes 1998, section 322B.313, subdivision 7, is amended to read:

Subd. 7. **FORECLOSURE OF 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, operating agreement, 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.

Sec. 17. Minnesota Statutes 1998, section 322B.323, subdivision 2, is amended to read:

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 is avoided under section 322B.80, subdivision 1, clause (5), 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.

New language is indicated by underline, deletions by strikeout.



Sec. 18. Minnesota Statutes 1998, section 322B.326, is amended to read:

**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 series of members, in proportion to the value of the contributions of the members reflected in the required records.

Sec. 19. Minnesota Statutes 1998, section 322B.33, subdivision 1, is amended to read:

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.

Sec. 20. Minnesota Statutes 1998, section 322B.33, subdivision 4, is amended to read:

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.

Sec. 21. Minnesota Statutes 1998, section 322B.333, subdivision 1, is amended to read:

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 operating agreement or by subdivision 2.

Sec. 22. Minnesota Statutes 1998, section 322B.333, subdivision 3, is amended to read:

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 operating agreement, 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.

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Sec. 23. Minnesota Statutes 1998, section 322B.336, subdivision 1, is amended to read:

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 operating agreement 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.

Sec. 24. Minnesota Statutes 1998, section 322B.336, subdivision 3, is amended to read:

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 operating agreement 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.

Sec. 25. Minnesota Statutes 1998, section 322B.34, subdivision 2, is amended to read:

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 operating agreement, and not more than 60 days before the date of the meeting.

Sec. 26. Minnesota Statutes 1998, section 322B.34, subdivision 3, is amended to read:

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 operating agreement or considered necessary or desirable by the board of governors or by any other person or persons calling the meeting.

Sec. 27. Minnesota Statutes 1998, section 322B.343, subdivision 1, is amended to read:

Subdivision 1. **ELECTRONIC CONFERENCES.** If and to the extent authorized in a member control agreement, the operating agreement, or by the board of governors of a closely held limited liability company, a conference among members by any means of communication through which the members may simultaneously hear each other during

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the conference constitutes a regular or special meeting of members, if the same notice is given of the conference to every owner of membership interests entitled to vote as would be required by this chapter for a meeting, and if the membership interests held by the members participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

Sec. 28. Minnesota Statutes 1998, section 322B.343, subdivision 2, is amended to read:

Subd. 2. **PARTICIPATION BY ELECTRONIC MEANS.** If and to the extent authorized in a member control agreement, the operating agreement, or by the board of governors of a closely held limited liability company, a member may participate in a regular or special meeting of members not described in subdivision 1 by any means of communication through which the member, other members so participating, and all members physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

Sec. 29. Minnesota Statutes 1998, section 322B.346, is amended to read:

**322B.346 ACT OF MEMBERS.**

Subdivision 1. **MAJORITY REQUIRED.** 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 or, 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 operating agreement 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.

Sec. 30. Minnesota Statutes 1998, section 322B.35, subdivision 1, is amended to read:

Subdivision 1. **METHOD.** An action required or permitted to be taken at a meeting of the members may be taken by written action signed by all of the members. If the articles or a member control agreement so provide, any action may be taken by written action signed by the members who own voting power equal to the voting power that would

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be required to take the same action at a meeting of the members at which all members were present.

Sec. 31. Minnesota Statutes 1998, section 322B.353, is amended to read:

**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 operating agreement. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of members originally present leaves less than the proportion otherwise required for a quorum.

Sec. 32. Minnesota Statutes 1998, section 322B.356, subdivision 1, is amended to read:

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 operating agreement, 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.

Sec. 33. Minnesota Statutes 1998, section 322B.356, subdivision 2, is amended to read:

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.

Sec. 34. Minnesota Statutes 1998, section 322B.356, subdivision 3, is amended to read:

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, ~~but no prescription under this subdivision may have the effect of transferring from an assignor of financial rights to the assignee the assignor's voting rights.~~

Sec. 35. Minnesota Statutes 1998, section 322B.363, subdivision 2, is amended to read:

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 and any agreement purporting to grant an irrevocable proxy is void. A member who revokes a proxy is not liable in any way for damages, restitution, or other claim unless the appointment is coupled with an interest in the membership interests or the limited liability company.

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Sec. 36. Minnesota Statutes 1998, section 322B.363, subdivision 3, is amended to read:

Subd. 3. **TERMINATION.** An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with a manager of the limited liability company, or by filing a new written appointment of a proxy with a manager of the limited liability company. Termination in either manner revokes all prior proxy appointments and is effective when filed with a manager of the limited liability company.

Sec. 37. Minnesota Statutes 1998, section 322B.366, subdivision 1, is amended to read:

Subdivision 1. **GENERAL RULE.** ~~Except as provided in subdivision 2,~~ 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, ~~subdivisions 4 to 7,~~ regarding proxies.

Sec. 38. Minnesota Statutes 1998, section 322B.37, is amended to read:

#### **322B.37 MEMBER CONTROL AGREEMENTS.**

Subdivision 1. **AUTHORIZATION AND SCOPE.** ~~A written agreement among persons who are then members, including a sole member, or who have signed contribution agreements, relating to the control of any phase of the business and affairs of the limited liability company, its liquidation, dissolution and termination, or the relations among members or persons who have signed contribution agreements is valid as provided in subdivision 2. 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) or in the operating agreement, 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 waive, in whole or in part, a member's dissenting rights under sections 322B.383 and 322B.386, but may not waive dissenters' rights under section 322B.873, subdivision 2, clause (1). 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~~

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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 written agreement among persons described in subdivision 1 that relates to the control of or the liquidation, dissolution and termination of the limited liability company, the relations among them, or any phase of the business and affairs of the limited liability company, including, without limitation, the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of governors or managers, the employment of members by the limited liability company, or the arbitration of disputes, is valid, if the agreement is signed by all persons who are then the members of the limited liability company, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power. An agreement authorized under this section 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. 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) An 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 control agreement may waive dissenters' rights, subject to section 322B.873, subdivision 3.

(d) 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 an a member control agreement authorized under this section takes away from any person any of the authority and responsibility which that person

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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 among members or between the members and the limited liability company with respect to any of the matters described.

Sec. 39. Minnesota Statutes 1998, section 322B.383, subdivision 1, is amended to read:

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) an amendment of the articles of organization that, 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;

~~(vii) changes a statement that was required under section 322B.115, subdivision 1, regarding the power of remaining members to avoid dissolution by giving dissolution avoidance consent, if the statement was required under the law when the articles of organization were executed;~~

~~(viii) changes a statement that was required under section 322B.115, subdivision 1, regarding the power of members to enter into a business continuation agreement, if the statement was required under the law when the articles of organization were executed; or~~

(2) a sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company, but not including a transaction permitted without member approval in section 322B.77, subdivision 1, or 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

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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 party, except as provided in section 322B.873, subdivision 2, clause (1)(i) and subject to section 322B.873, subdivision 3 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; or

(5) 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 operating agreement, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests; or

(6) a resolution of the board of governors under section 322B.873, subdivision 2, to implement a business continuation agreement.

Sec. 40. Minnesota Statutes 1998, section 322B.386, subdivision 1, is amended to read:

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

(b) "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 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 either entered into a winding up merger under section 322B.81, subdivision 3, or has disposed of its assets pursuant to a business continuation agreement under section 322B.873, subdivision 2.

Sec. 41. Minnesota Statutes 1998, section 322B.386, subdivision 2, is amended to read:

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 if applicable, sections 322B.873, subdivisions 2 and 3, 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.

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Sec. 42. Minnesota Statutes 1998, section 322B.386, subdivision 4, is amended to read:

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 all members who have complied with subdivision 3 and to 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, if applicable, section ~~322B.873, subdivisions 2 and 3,~~ 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.

Sec. 43. Minnesota Statutes 1998, section 322B.386, subdivision 5, is amended to read:

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, if applicable, section ~~322B.873, subdivisions 2 and 3,~~ 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.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 44. Minnesota Statutes 1998, section 322B.40, subdivision 1, is amended to read:

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.

Sec. 45. Minnesota Statutes 1998, section 322B.40, subdivision 5, is amended to read:

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).

Sec. 46. Minnesota Statutes 1998, section 322B.40, subdivision 6, is amended to read:

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:

(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.

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(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) A statement filed 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.155 and 322B.383.

Sec. 47. Minnesota Statutes 1998, section 322B.41, subdivision 3, is amended to read:

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 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.

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Sec. 48. Minnesota Statutes 1998, section 322B.41, subdivision 4, is amended to read:

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.

Sec. 49. Minnesota Statutes 1998, section 322B.42, subdivision 5, is amended to read:

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.

Sec. 50. Minnesota Statutes 1998, section 322B.43, subdivision 1, is amended to read:

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.

Sec. 51. Minnesota Statutes 1998, section 322B.43, subdivision 3, is amended to read:

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.

Sec. 52. Minnesota Statutes 1998, section 322B.50, is amended to read:

**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.

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Sec. 53. Minnesota Statutes 1998, section 322B.51, is amended to read:

**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 operating agreement or by the act of the board of governors.

Sec. 54. Minnesota Statutes 1998, section 322B.52, is amended to read:

**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.

Sec. 55. Minnesota Statutes 1998, section 322B.54, subdivision 1, is amended to read:

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 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 operating agreement or an agreement.

Sec. 56. Minnesota Statutes 1998, section 322B.56, subdivision 1, is amended to read:

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 operating agreement 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.

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Sec. 57. Minnesota Statutes 1998, section 322B.603, is amended to read:

**322B.603 OPERATING AGREEMENT 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 operating agreement 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 operating agreement only if the act expressly states that it is intended to constitute or revise the operating agreement.

Subd. 2. **POWER OF BOARD OF GOVERNORS.** An initial operating agreement 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 operating agreement 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 operating agreement adopted, amended, or repealed by the board of governors. After the adoption of the initial operating agreement, the board of governors shall not adopt, amend, or repeal an operating agreement 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 an operating agreement 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 operating agreement 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.

Sec. 58. Minnesota Statutes 1998, section 322B.606, subdivision 1, is amended to read:

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.

Sec. 59. Minnesota Statutes 1998, section 322B.61, is amended to read:

**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 operating agreement. 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 operating agreement.

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Sec. 60. Minnesota Statutes 1998, section 322B.613, is amended to read:

**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 operating agreement.

Sec. 61. Minnesota Statutes 1998, section 322B.616, is amended to read:

**322B.616 TERMS.**

Unless fixed terms are provided for in the articles, a member control agreement, or operating agreement, 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 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.

Sec. 62. Minnesota Statutes 1998, section 322B.623, is amended to read:

**322B.623 COMPENSATION.**

Subject to any limitations in the articles, a member control agreement, or operating agreement, the board of governors may fix the compensation of governors.

Sec. 63. Minnesota Statutes 1998, section 322B.626, is amended to read:

**322B.626 CLASSIFICATION OF GOVERNORS.**

Governors may be divided into classes as provided in the articles, a member control agreement, or operating agreement.

Sec. 64. Minnesota Statutes 1998, section 322B.63, subdivision 1, is amended to read:

Subdivision 1. **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.

Sec. 65. Minnesota Statutes 1998, section 322B.636, subdivision 1, is amended to read:

Subdivision 1. **MODIFICATION.** The provisions of this section apply unless modified by the articles of organization, a member control agreement, or the operating agreement.

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Sec. 66. Minnesota Statutes 1998, section 322B.636, subdivision 3, is amended to read:

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 the proportion a majority of the voting power of the all membership interests of the classes or series the governor represents sufficient to elect them, except as provided in subdivision 4 entitled to vote at an election of governors; provided that if a governor has been elected solely by the holders of a 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.

Sec. 67. Minnesota Statutes 1998, section 322B.64, is amended to read:

### 322B.64 VACANCIES.

Unless different rules for filling vacancies are provided for in the articles, a member control agreement, or operating agreement:

(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.

Sec. 68. Minnesota Statutes 1998, section 322B.643, subdivision 1, is amended to read:

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 operating agreement 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 operating agreement provide otherwise.

Sec. 69. Minnesota Statutes 1998, section 322B.643, subdivision 3, is amended to read:

Subd. 3. **CALLING MEETINGS AND NOTICE.** Unless the articles of organization, a member control agreement, or operating agreement 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 operating agreement require it.

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Sec. 70. Minnesota Statutes 1998, section 322B.643, subdivision 4, is amended to read:

Subd. 4. **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 operating agreement, 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.

Sec. 71. Minnesota Statutes 1998, section 322B.646, is amended to read:

**322B.646 ABSENT GOVERNORS.**

If the articles of organization, a member control agreement, or operating agreement 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.

Sec. 72. Minnesota Statutes 1998, section 322B.65, is amended to read:

**322B.65 QUORUM.**

A majority, or a larger or smaller proportion or number provided in the articles of organization, a member control agreement, or operating agreement, 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.

Sec. 73. Minnesota Statutes 1998, section 322B.653, is amended to read:

**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 of or number of governors that would constitute a quorum for the transaction of business at the meeting, except where this chapter or 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.

Sec. 74. Minnesota Statutes 1998, section 322B.656, subdivision 1, is amended to read:

Subdivision 1. **METHOD.** An action required or permitted to be taken at a board of governors meeting may be taken by written action signed by all of the governors. If the

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articles or a member control agreement so provide, any action, other than an action requiring member approval, may be taken by written action signed 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.

Sec. 75. Minnesota Statutes 1998, section 322B.66, subdivision 2, is amended to read:

Subd. 2. **MEMBERSHIP.** Committee members must be natural persons. Unless the articles, or a member control agreement, or operating agreement 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.

Sec. 76. Minnesota Statutes 1998, section 322B.663, subdivision 4, is amended to read:

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 not 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.23 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.

Sec. 77. Minnesota Statutes 1998, section 322B.666, subdivision 1, is amended to read:

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;

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(2) the material facts as to the contract or transaction and as to the manager's ~~governor's~~ or ~~managers'~~ governors' interest are fully disclosed or known to the members 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 of governors or a committee, and the board of governors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board of governors or committee, but the interested governor or governors are not counted in determining the presence of a quorum and must 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.

Sec. 78. Minnesota Statutes 1998, section 322B.673, subdivision 1, is amended to read:

Subdivision 1. **PRESUMPTION AND MODIFICATION.** Unless the articles of organization, a member control agreement, or the operating agreement provide otherwise, the chief manager and treasurer have the duties specified in this section.

Sec. 79. Minnesota Statutes 1998, section 322B.673, subdivision 2, is amended to read:

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 operating agreement 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.

Sec. 80. Minnesota Statutes 1998, section 322B.676, is amended to read:

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 operating agreement or in a resolution ap-

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proved by the affirmative vote of a majority of the governors present, any other managers or agents the board of governors considers necessary for the operation and management of the limited liability company. Each of these managers and agents has the powers, rights, duties, responsibilities, and terms in office provided for in the articles, a member control agreement, or operating agreement or determined by the board of governors.

Sec. 81. Minnesota Statutes 1998, section 322B.686, subdivision 3, is amended to read:

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 operating agreement, or determined by the board of governors, or pursuant to section 322B.68.

Sec. 82. Minnesota Statutes 1998, section 322B.689, is amended to read:

**322B.689 DELEGATION.**

Unless prohibited by the articles, a member control agreement, or operating agreement 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.

Sec. 83. Minnesota Statutes 1998, section 322B.699, subdivision 4, is amended to read:

Subd. 4. **PROHIBITION OR LIMIT ON INDEMNIFICATION OR ADVANCES.** The articles of organization, a member control agreement, or operating agreement 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 operating agreement establishing the prohibition or limit on indemnification or advances.

Sec. 84. Minnesota Statutes 1998, section 322B.72, subdivision 1, is amended to read:

Subdivision 1. **GOVERNING BOARD APPROVAL AND NOTICE TO OWNERS.** 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 governing board of each constituent organization and must then be submitted at a regular or a special meeting to the owners of:

- (1) each constituent organization, in the case of a plan of merger; and

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(2) the organization whose ownership interests will be acquired by the acquiring organization in the exchange, in the case of a plan of exchange.

The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners owning any class or series of ~~stock~~ ownership interest of an organization are entitled to vote on the plan of merger or exchange pursuant to this section, written notice must be given to every owner of that organization, 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 302A.435 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 322B.34 for notice of meetings of members in the case of a limited liability company. 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.

Sec. 85. Minnesota Statutes 1998, section 322B.72, subdivision 2, is amended to read:

Subd. 2. **APPROVAL BY OWNERS.** (a) At the meeting a vote of the owners 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 ownership interests entitled to vote. Except as provided in paragraph (b) or a member control agreement, a class or series of ownership interests of the organization 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 ownership 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.

(b) A class or series of ownership interests of the organization is not entitled to vote as a class or series solely because the plan of merger effects a cancellation of the ownership interests of the class or series if the plan of merger effects a cancellation of all ownership interests of the organization of all classes and series that are existing immediately before the merger and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their shares under section 322B.383 in the event of the merger.

Sec. 86. Minnesota Statutes 1998, section 322B.80, subdivision 1, is amended to read:

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

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

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

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

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

(5)(i) for limited liability companies whose existence begins before the effective date of this act, except as otherwise provided in the articles of organization or a member control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:

(i) ~~death of any member;~~

(ii) ~~retirement of any member;~~

(iii) ~~resignation of any member;~~

(iv) ~~redemption of a member's complete membership interest;~~

(v) ~~assignment of a member's governance rights under section 322B.313 which leaves the assignor with no governance rights;~~

(vi) ~~a buy-out of a member's membership interest under section 322B.833 that leaves that member with no governance rights;~~

(vii) ~~expulsion of any member;~~

(viii) ~~bankruptcy of any member;~~

(ix) ~~dissolution of any member;~~

(x) ~~a merger in which the limited liability company is not the surviving organization;~~

(xi) ~~an exchange in which the limited liability company is not the acquiring organization; or~~

(xii) ~~the occurrence of any other 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; or

(ii) for limited liability companies whose existence begins on or after the effective date of this act, 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

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

Sec. 87. Minnesota Statutes 1998, section 322B.813, subdivision 3, is amended to read:

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) ~~subject to any business continuation agreement,~~ 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.

Sec. 88. Minnesota Statutes 1998, section 322B.816, subdivision 4, is amended to read:

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. ~~If the dissolved limited liability company gave the additional information referred to in subdivision 3, nothing in this section bars the creditor or claimant from seeking to enforce its rights against the successor organization.~~

(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).

Sec. 89. Minnesota Statutes 1998, section 322B.833, subdivision 2, is amended to read:

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

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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 or business continuation 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.

Sec. 90. Minnesota Statutes 1998, section 322B.833, subdivision 5, is amended to read:

Subd. 5. **CONSIDERATIONS AS TO DISSOLUTION.** In determining what relief to order, the court shall take into account that any relief that results in the termination of a member's membership interest will ~~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.

Sec. 91. Minnesota Statutes 1998, section 322B.833, subdivision 6, is amended to read:

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 ~~business continuation~~ member control agreement, such as any form of equitable relief, or a buy-out or partial liquidation coupled with the continua-

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tion 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.

Sec. 92. Minnesota Statutes 1998, section 322B.843, subdivision 2, is amended to read:

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 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 operating agreement 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.

Sec. 93. Minnesota Statutes 1998, section 322B.873, subdivision 1, is amended to read:

Subdivision 1. **DISPOSITION UPON LIQUIDATION.** Subject to subdivision 4, except when the business of a dissolved limited liability company is being continued under subdivision 2 or 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 satisfying 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.

Sec. 94. Minnesota Statutes 1998, section 322B.873, subdivision 4, is amended to read:

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.

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**Sec. 95. REPEALER.**

Minnesota Statutes 1998, sections 322B.03, subdivisions 4, 5, 9, and 16; 322B.363, subdivision 8; 322B.366, subdivision 2; 322B.816, subdivision 3; and 322B.873, subdivisions 2 and 3, are repealed.

**Sec. 96. REVISOR INSTRUCTION.**

The revisor of statutes shall change the term "operating agreement" or similar term to "bylaws" or similar term wherever it appears in Minnesota Statutes, chapter 322B, except in the first sentence of section 322B.603, subdivision 1.

**Sec. 97. EFFECTIVE DATE; APPLICATION.**

Sections 1 to 96 are effective August 1, 1999, and unless otherwise specified apply to all limited liability companies in existence on or after that date.

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**ARTICLE 3****RUPA CONFORMING CHANGES**

Section 1. Minnesota Statutes 1998, section 319B.02, subdivision 10, is amended to read:

Subd. 10. **MINNESOTA FIRM.** "Minnesota firm" includes a corporation organized under chapter 302A or 317A, limited liability company organized under chapter 322B, and limited liability partnership registered under section 323.44, and limited liability partnership that has an effective statement of qualification under section 323A.10-01.

Sec. 2. Minnesota Statutes 1998, section 319B.02, subdivision 12, is amended to read:

Subd. 12. **ORGANIZATIONAL DOCUMENT.** "Organizational document" means:

(1) with respect to a corporation organized under chapter 302A or 317A, that corporation's articles of incorporation;

(2) with respect to a limited liability company organized under chapter 322B, that limited liability company's articles of organization; and

(3) with respect to a limited liability partnership registered under section 323.44, that limited liability partnership's registration and any notice filed under section 323.44, subdivision 9, in connection with that registration; and

(4) with respect to a limited liability partnership that has an effective statement of qualification under section 323A.10-01, that statement of qualification.

Sec. 3. Minnesota Statutes 1998, section 319B.02, subdivision 21, is amended to read:

Subd. 21. **STATEMENT OF FOREIGN QUALIFICATION.** "Statement of foreign qualification" means:;

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(1) with respect to a foreign firm that is a limited liability partnership, the and has filed a statement of qualification required under section 323.49, that statement of qualification and any notice filed under section 323.49, subdivision 9, in connection with that registration; and

(2) with respect to a limited liability partnership that has an effective statement of foreign qualification under section 323A.11-02, that statement of foreign qualification.

Sec. 4. Minnesota Statutes 1998, section 319B.02, subdivision 22, is amended to read:

Subd. 22. **UPDATE.** "Update" means:

(1) with respect to a Minnesota professional firm that is either a Minnesota corporation or a Minnesota limited liability company, amend the organizational document;

(2) with respect to a Minnesota professional firm that is a Minnesota limited liability partnership registered under section 323.44, file a notice under section 323.44, subdivision 9, in connection with the Minnesota limited liability partnership's registration;

(3) with respect to a foreign professional firm that is a foreign corporation, file a notice under section 303.115 in connection with the foreign corporation's certificate of authority;

(4) with respect to a foreign firm that is a limited liability company, file a notice under section 322B.92, clause (3), in connection with the foreign limited liability company's certificate of authority; ~~and~~

(5) with respect to a foreign professional firm that is a foreign limited liability partnership and has filed a statement of qualification under section 323.49, file a notice under section 323.49, subdivision 9, in connection with the foreign limited liability partnership's that statement of qualification ;

(6) with respect to a Minnesota professional firm that is a limited liability partnership and has an effective statement of qualification under section 323A.10-01, amend that statement of qualification; and

(7) with respect to a foreign professional firm that is a limited liability partnership and has an effective statement of foreign qualification under section 323A.11-02, amend that statement of foreign qualification.

Sec. 5. Minnesota Statutes 1998, section 319B.04, subdivision 2, is amended to read:

Subd. 2. **ELECTION TO INVOKE AUTHORITY UNDER THIS ACT.** To elect to become a foreign professional firm and be authorized to furnish professional services according to sections 319B.01 to 319B.12, a foreign firm must in its certificate of authority or statement of foreign qualification:

(1) state that the firm elects to operate under sections 319B.01 to 319B.12;

(2) acknowledge that the firm is subject to those sections;

(3) state that, to the extent its generally applicable governing law conflicts or differs with those sections, the foreign firm has made the necessary changes to the agreements

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and other documents controlling its structure, governance, operations, and internal affairs so as to comply with those sections; and

(4) specify from the list stated in section 319B.02, subdivision 19, the category or categories of professional services the foreign firm is authorized to provide within Minnesota.

The statements, acknowledgment, and specification may be made when the foreign firm initially files for a certificate of authority or statement of foreign qualification or may be added at a later time by updating that document.

Sec. 6. Minnesota Statutes 1998, section 319B.04, subdivision 3, is amended to read:

Subd. 3. **RESCISSION AND AMENDMENT OF ELECTION.** (a) A foreign firm may rescind its election by updating its certificate of authority or statement of foreign qualification to delete the statements, acknowledgment, and specification required by subdivision 2.

(b) A foreign firm may update its certificate of authority or statement of foreign qualification to change the specification required by subdivision 2, clause (4).

Sec. 7. Minnesota Statutes 1998, section 319B.08, subdivision 1, is amended to read:

Subdivision 1. **ACQUISITION OF INTERESTS OR AUTOMATIC LOSS OF PROFESSIONAL FIRM STATUS.** (a) If an owner dies or becomes disqualified to practice all the pertinent professional services, then either:

(1) within 90 days after the death or the beginning of the disqualification, all of that owner's ownership interest must be acquired by the professional firm, by persons permitted by section 319B.07 to own the ownership interest, or by some combination; or

(2) at the end of the 90-day period, the firm's election under section 319B.03, subdivision 2, or 319B.04, subdivision 2, is automatically rescinded, the firm loses its status as a professional firm, and the authority created by that election and status terminates.

An acquisition satisfies clause (1) if all right and title to the deceased or disqualified owner's interest are acquired before the end of the 90-day period, even if some or all of the consideration is paid after the end of the 90-day period. However, payment cannot be secured in any way that violates sections 319B.01 to 319B.12.

(b) If automatic rescission does occur under paragraph (a), the firm must immediately and accordingly update its organizational document, certificate of authority, or statement of foreign qualification. Even without that updating, however, the rescission, loss of status, and termination of authority provided by paragraph (a) occur automatically at the end of the 90-day period.

Sec. 8. Minnesota Statutes 1998, section 319B.10, subdivision 2, is amended to read:

Subd. 2. **EFFECT ON PARTICIPATING PROFESSIONAL FIRM.** (a) If a professional firm participates in and survives a reorganization but the reorganization causes the surviving firm to be out of compliance with section 319B.07 or 319B.09, or both:

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(1) the surviving firm's election under section 319B.03, subdivision 2, or 319B.04, subdivision 2, is automatically rescinded;

(2) the surviving firm immediately loses its status as a professional firm and the authority created by that election and status terminates; and

(3) the surviving firm must immediately and accordingly update its organizational document, certificate of authority, or statement of foreign qualification. Even without that amendment, however, the rescission, loss of status, and termination of authority occur automatically when the reorganization takes effect.

(b) If, before a reorganization takes effect, the 90-day deadline established in section 319B.07, subdivision 1, has been triggered but has not yet elapsed with regard to an ownership interest in a professional firm participating in the reorganization, the surviving firm is not out of compliance with sections 319B.07 and 319B.09 merely because the reorganization accords a comparable ownership interest in the surviving firm to the disqualified owner or the representative of the deceased owner's estate. The original 90-day deadline applies to the comparable ownership interest and the surviving firm.

Sec. 9. Minnesota Statutes 1998, section 319B.11, subdivision 3, is amended to read:

Subd. 3. **FILING OF ORGANIZATIONAL DOCUMENT AND REPORT INFORMATION.** (a) No professional firm may furnish professional services within Minnesota until the firm files with each board having jurisdiction over the pertinent professional services:

(1) a copy of the firm's organizational document, certificate of authority, or statement of foreign qualification;

(2) a report containing the same information as required by subdivision 4; and

(3) except as stated in paragraph (b), a fee of \$100.

(b) If a firm has previously been organized under sections 319A.01 to 319A.22, that firm is not required to pay the filing fee under paragraph (a).

Sec. 10. Minnesota Statutes 1998, section 319B.11, subdivision 4, is amended to read:

Subd. 4. **ANNUAL REPORT.** (a) Every professional firm must file annually on or before January 1 with the board or boards having jurisdiction over the pertinent professional services a report containing the following:

(1) the name and address of the professional firm;

(2) the contents of any amendment made to the firm's organizational document, certificate of authority, or statement of foreign qualification since the filing of the most recent report under subdivision 3 or this subdivision;

(3) a designation of the position or positions within the firm that have governance authority;

(4) the name and address of each owner of an ownership interest and each person occupying a position with governance authority;

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(5) a statement as to whether all employees, agents, and independent contractors furnishing professional services within Minnesota on behalf of the professional firm are professionals authorized to furnish at least one category of the pertinent professional services;

(6) except in the case of a professional firm that is organized under chapter 317A or the nonprofit corporation statute of another state, a statement as to whether all owners and persons occupying a position with governance authority are professionals authorized to furnish at least one category of the pertinent professional services;

(7) in the case of a professional firm that is organized under chapter 317A or the nonprofit corporation statute of another state, a statement as to whether at least one person occupying a position with governance authority is a professional authorized to furnish at least one category of the pertinent professional services; and

(8) any additional information as the board may by rule prescribe as appropriate to assist in determining whether a professional firm is complying with sections 319B.01 to 319B.12.

The statement required by clauses (5), (6), and (7) must be made and signed under oath by a professional who is an owner or employee of the professional firm, licensed in at least one category of the pertinent professional services and duly authorized to make the statement on behalf of the professional firm.

(b) For filing each annual report under paragraph (a), each firm must pay a fee of \$25 to each board with which the report is filed.

Sec. 11. Minnesota Statutes 1998, section 319B.11, subdivision 8, is amended to read:

**Subd. 8. INVOLUNTARY DISSOLUTION AND RESCISSION OF PROFESSIONAL FIRM STATUS.** A board, through the attorney general, may institute proceedings in a district court of this state or a contested case proceeding under chapter 14 to involuntarily rescind a professional firm's election under section 319B.03, subdivision 2, or 319B.04, subdivision 2, to impose restrictions or conditions on that election or to reprimand the professional firm due to a violation of sections 319B.01 to 319B.12, the relevant licensing statute as listed in section 319B.02, subdivision 19, or the rules of the board. A board, through the attorney general, may institute proceedings in a district court of this state to have a Minnesota professional firm involuntarily dissolved, or a foreign professional firm's certificate of authority or statement of foreign qualification revoked on those grounds, as well as on any other grounds provided by Minnesota law. A board may seek reprimands, restrictions, conditions, involuntary rescission, and, as appropriate, dissolution or revocation within a single proceeding in a district court of this state. After a court enters a decree imposing rescission, dissolution, or revocation upon a professional firm, a board 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. A board's claim against a professional firm for involuntary dissolution or revocation does not abate simply because the professional firm has rescinded its election under section 319B.03, subdivision 2, or 319B.04, subdivision 2. A voluntary rescission does abate a board's claim to obtain reprimands, restrictions, conditions, or involuntary rescission.

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Sec. 12. Minnesota Statutes 1998, section 322A.02, is amended to read:

**322A.02 NAME.**

(a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain the words "limited partnership" or the abbreviation "LP" or "L.P." or in the case of a limited liability limited partnership shall contain:

(i) the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."; or

(ii) the words "limited partnership" or the abbreviation "LP" or "L.P." plus the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";

(2) may not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) must be distinguishable from the name of a domestic corporation or limited partnership, whether profit or nonprofit, or a foreign corporation or limited partnership authorized or registered to do business in this state, whether profit or nonprofit, a limited liability company, whether domestic or foreign, a limited liability partnership, whether domestic or foreign, or a name the right to which is reserved or provided for in the manner provided for in sections 302A.117, 322A.03, 322B.125, or 333.001 to 333.54, unless there is filed with the certificate a written consent, court decree of prior right, or affidavit of nonuse, of the kind required by section 302A.115, subdivision 1, paragraph (d); and

(4) may not contain the following words: corporation, incorporated.

The secretary of state shall determine whether a name is "distinguishable" from another name for purposes of this section and section 322A.03. This section does not abrogate or limit the law of unfair competition or unfair practices, nor sections 333.001 to 333.54, nor the laws of the United States with respect to the right to acquire and protect copyrights, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or principles of equity.

(b) A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 5.22.

Sec. 13. Minnesota Statutes 1998, section 322A.87, is amended to read:

**322A.87 RULES FOR CASES NOT PROVIDED FOR IN SECTIONS 322A.01 TO 322A.87.**

~~In any case not provided for in sections 322A.01 to 322A.87 the provisions of chapter 323, the Uniform Partnership Act govern.~~ (a) Before January 1, 2002, for any case not provided for in sections 322A.01 to 322A.87 the governing law is as follows:

(1) for limited partnerships formed after December 31, 1998, chapter 323A governs;

(2) for limited partnerships formed before January 1, 1999;

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(i) if the limited partnership has filed a statement of qualification under section 322A.88 or has amended its certificate of limited partnership to state that the limited partnership is subject to chapter 323A, chapter 323A governs;

(ii) if subparagraph (i) does not apply, chapter 323 governs.

(b) Beginning January 1, 2002, for any case not provided for in sections 322A.01 to 322A.87, chapter 323A governs.

Sec. 14. Minnesota Statutes 1998, section 322A.88, is amended to read:

**322A.88 LIMITED LIABILITY LIMITED PARTNERSHIP.**

(a) A limited partnership may become a limited liability limited partnership by:

(1) obtaining approval of the terms and conditions under which the limited partnership elects limited liability limited partnership status by the vote necessary to amend the limited partnership agreement except, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions;

(2) filing a statement of qualification under section 323A.10-01(c) of the Uniform Partnership Act (1994); and

(3) complying with the name requirements of section 323A.10-02 of the Uniform Partnership Act (1994) 322A.02, paragraph (a), clause (1), as those requirements pertain to a limited liability limited partnership.

(b) A limited liability limited partnership continues to be the same entity that existed before the filing of a statement of qualification under section 323A.10-01(c) of the Uniform Partnership Act (1994).

(c) Sections 323A.3-06(c) and 323A.3-07(d) of the Uniform Partnership Act (1994) apply to both general and limited partners of a limited liability limited partnership.

Sec. 15. Minnesota Statutes 1998, section 323A.10-01, is amended to read:

**323A.10-01 STATEMENT OF QUALIFICATION.**

(a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

(1) the name of the partnership;

(2) the street address, including the zip code, of the partnership's chief executive office and, if different, the street address, including the zip code, of an office in this state, if any;

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(3) if the partnership does not have an office in this state, the name and street address, including the zip code, of the partnership's agent for service of process;

(4) a statement that the partnership elects to be a limited liability partnership; and

(5) a deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to section 323A.1-05(d) or revoked pursuant to section 323A.10-03.

(f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c).

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(i) A statement of qualification may include the information necessary to make an election under section 319B.03, subdivision 2, and to update that information as provided in section 319B.03, subdivision 3.

Sec. 16. Minnesota Statutes 1998, section 323A.11-02, is amended to read:

**323A.11-02 STATEMENT OF FOREIGN QUALIFICATION.**

(a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) the name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP;"

(2) the street address, including the zip code, of the partnership's chief executive office and, if different, the street address, including the zip code, of an office of the partnership in this state, if any;

(3) if there is no office of the partnership in this state, the name and street address, including the zip code, of the partnership's agent for service of process; and

(4) a deferred effective date, if any.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the

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statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to section 323A.1-05(d) or revoked pursuant to section 323A.10-03.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(e) A statement of foreign qualification may include the information necessary to make an election under section 319B.04, subdivision 2, and to update that information as provided in section 319B.04, subdivision 3.

#### Sec. 17. REVISOR INSTRUCTION.

Effective January 1, 2002, the revisor of statutes shall remove from Minnesota Statutes, chapter 319B, all references to Minnesota Statutes, chapter 323.

#### Sec. 18. EFFECTIVE DATE.

Sections 1 to 16 are effective retroactive to January 1, 1999.

Presented to the governor April 19, 1999

Signed by the governor April 22, 1999, 9:30 a.m.

### CHAPTER 86—H.F.No. 1037

*An act relating to Minnesota Statutes; correcting erroneous, ambiguous, and omitted text and obsolete references; eliminating certain redundant, conflicting, and superseded provisions; making miscellaneous technical corrections to statutes and other laws; amending Minnesota Statutes 1998, sections 2.724, subdivision 1; 10A.01, subdivision 18; 11A.16, subdivision 6; 12.21, subdivision 3; 12.33, subdivision 4; 15.059, subdivision 5a; 16B.171; 16B.335, subdivision 4; 16B.465, subdivision 1; 16C.05, subdivision 2; 17.114, subdivisions 3 and 4; 17.117, subdivision 15; 17.452, subdivision 1; 17.498; 18B.045, subdivision 1; 18E.06; 19.52, subdivision 2; 48A.12, subdivision 1; 58.02, subdivision 22; 60L.08, subdivision 1; 62E.15, subdivision 2; 79A.06, subdivision 5; 103A.43; 103B.321, subdivision 1; 103B.351; 103B.581, subdivision 2; 103F.461; 103G.221, subdivision 1; 103H.175, subdivision 3; 103H.275; 115A.175, subdivision 2; 115A.33; 115B.20, subdivisions 1 and 6; 115C.021, subdivision 1; 116.182, subdivision 3a; 116J.70, subdivision 2a; 117.47; 119A.03, subdivision 2; 119A.26, subdivision 2; 119A.45; 119A.46, subdivision 4; 119A.51, subdivision 1; 119B.05, subdivision 1; 123B.57, subdivision 6; 124D.17, subdivision 7; 126C.21, subdivision 4; 126C.48, subdivision 8; 136F.47; 156.11; 168.022, subdivision 4; 169.1217, subdivision 7a; 169.129, subdivision 2; 171.061, subdivision 1; 171.07, subdivision 10; 174.06, subdivision 1; 179.12; 181.58; 205A.01, subdivision 2; 219.074, subdivision 2; 219.39; 221.034, subdivision 5; 221.036, subdivisions 1 and 3; 239.761, subdivisions 13 and 14; 245.462, subdivisions 4 and 7; 245.466, subdivision 4; 245.4871, subdivision 9; 245.4875, subdivision 4; 245.825, subdivision 1b; 256B.0625, subdivision 32; 256B.0928; 256J.45, subdivision 2; 257.45; 257.74, subdivision 2; 268.9165; 287.09; 307.08, subdivisions 2, 8, 9, and 10; 340A.3021, subdivision 2; 446A.01; 446A.04, subdivision 7; 462A.21, subdivision 19; 480.054; 480.09, subdivision 1; 481.02, subdivision 2; 500.245, subdivision 1; 518.5511, subdivision 1; 518.6111, subdivision 5; and 609.26, by adding a subdivision; Laws 1994, chapter 560, article 2, section 15; and Laws 1997, chapter 207, section 12; repealing Minnesota Statutes 1998, sections 3.873; 16B.88, subdivision 5; 62J.47; 79.51, subdivision 4; 115A.159; 119A.28, subdivision 4; 119A.31, subdivision 3; 119A.54; 124D.17,*

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