

**CHAPTER 311—S.F.No. 2542**

*An act relating to business organizations; regulating business corporations, nonprofit corporations, and limited liability companies; providing legal recognition of electronic records and signatures; regulating meetings by means of remote communications and dissolutions and terminations; regulating use of names by successor corporations; regulating investment company authority to issue shares; defining terms; making technical and conforming changes; providing for mergers and acquisitions by business corporations; amending Minnesota Statutes 2000, sections 302A.011, subdivisions 17, 21, 31, 38, 50, by adding subdivisions; 302A.115, subdivision 5; 302A.135, by adding a subdivision; 302A.231; 302A.239, subdivisions 1, 2; 302A.431, subdivision 3; 302A.433, subdivision 3; 302A.436; 302A.441; 302A.449, subdivision 1; 302A.471, subdivision 1; 302A.621, subdivisions 1, 2, 3, 4; 302A.673, subdivision 1; 302A.734; 303.11; 317A.011, by adding subdivisions; 317A.231; 317A.239, subdivisions 1, 2; 317A.431, subdivision 3; 317A.433, subdivision 3; 317A.445; 317A.453, subdivision 1; 317A.733, subdivisions 3, 4; 322A.03; 322B.03, subdivisions 36a, 45a, by adding subdivisions; 322B.12, subdivision 4; 322B.333, subdivision 3; 322B.336, subdivision 3; 322B.343; 322B.35, subdivisions 1, 2; 322B.363, subdivision 1; 322B.643; 322B.656, subdivisions 1, 2; 322B.826; 323A.11-02; 333.055, subdivision 4; proposing coding for new law in Minnesota Statutes, chapters 302A; 317A; 322B; repealing Minnesota Statutes 2000, section 317A.449.*

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

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**ARTICLE 1****BUSINESS CORPORATIONS**

Section 1. Minnesota Statutes 2000, section 302A.011, subdivision 17, is amended to read:

Subd. 17. **NOTICE.** "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation. In all other cases, "notice" is given to a person when mailed to the person at an address designated by the person or at the last known address of the person, or when communicated to the person orally, or when handed to the person, or when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice is also given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is deemed received when it is given.

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Sec. 2. Minnesota Statutes 2000, section 302A.011, subdivision 21, is amended to read:

Subd. 21. **PARENT.** "Parent" of a specified corporation means a corporation that directly, or indirectly through related ~~corporations~~ organizations, owns more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation.

Sec. 3. Minnesota Statutes 2000, section 302A.011, subdivision 31, is amended to read:

Subd. 31. **SUBSIDIARY.** "Subsidiary" of a specified corporation means a corporation having more than 50 percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related ~~corporations~~ organizations, by the specified corporation.

Sec. 4. Minnesota Statutes 2000, section 302A.011, subdivision 38, is amended to read:

Subd. 38. **CONTROL SHARE ACQUISITION.** "Control share acquisition" means an acquisition, directly or indirectly, by an acquiring person of beneficial ownership of shares of an issuing public corporation that, except for section 302A.671, would, when added to all other shares of the issuing public corporation beneficially owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the ranges specified in section 302A.671, subdivision 2, paragraph (d), but does not include any of the following:

(a) an acquisition before, or pursuant to an agreement entered into before, August 1, 1984;

(b) an acquisition by a donee pursuant to an inter vivos gift not made to avoid section 302A.671 or by a distributee as defined in section 524.1-201, clause (10);

(c) an acquisition pursuant to a security agreement not created to avoid section 302A.671;

(d) an acquisition under sections 302A.601 to 302A.661, if the issuing public corporation is a party to the transaction;

(e) an acquisition from the issuing public corporation;

(f) an acquisition for the benefit of others by a person acting in good faith and not made to avoid section 302A.671, to the extent that the person may not exercise or direct the exercise of the voting power or disposition of the shares except upon the instruction of others;

(g) an acquisition pursuant to a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or any of its subsidiaries, or by a fiduciary of the plan acting in a fiduciary capacity pursuant to the plan; or

(h) an acquisition ~~subsequent to January 1, 1991~~, pursuant to an offer to purchase for cash pursuant to a tender offer, or to exchange for stock pursuant to an exchange

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offer, all shares of the voting stock of the issuing public corporation:

(i) ~~which~~ (1) that has been approved by a majority vote of the members of a committee ~~comprised~~ composed solely of the one or more disinterested members of the board of the issuing public corporation formed pursuant to section 302A.673, subdivision 1, paragraph (d), before the commencement of, or the public announcement of the intent to commence, the tender or exchange offer; and

(ii) (2) pursuant to which the acquiring person will become the owner of over 50 percent of the voting stock of the issuing public corporation outstanding at the time of the transaction.

For purposes of this subdivision, shares beneficially owned by a plan described in clause (g), or by a fiduciary of a plan described in clause (g) pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan.

Sec. 5. Minnesota Statutes 2000, section 302A.011, subdivision 50, is amended to read:

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

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

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

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

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

(4) if the shares are not quoted on the NASDAQ National Nasdaq Stock Market, on the NASDAQ Small Cap Market, or any system then in use; or, with respect to the reference in section 302A.553, subdivision 3, if the person or persons selling the shares shall have commenced a tender offer or have announced an intention to seek control of the corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement, provided that.

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

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

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Sec. 6. Minnesota Statutes 2000, section 302A.011, is amended by adding a subdivision to read:

**Subd. 60. ELECTRONIC COMMUNICATION.** “Electronic communication” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication, and that may be directly reproduced in paper form by the recipient through an automated process.

Sec. 7. Minnesota Statutes 2000, section 302A.011, is amended by adding a subdivision to read:

**Subd. 61. REMOTE COMMUNICATION.** “Remote communication” means communication via electronic communication, conference telephone, video conference, the Internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Sec. 8. Minnesota Statutes 2000, section 302A.011, is amended by adding a subdivision to read:

**Subd. 62. AUTHENTICATED.** “Authenticated” means, with respect to an electronic communication, that the communication is delivered to the principal place of business of the corporation, or to an officer or agent of the corporation authorized by the corporation to receive the communication, and that the communication sets forth information from which the corporation can reasonably conclude that the communication was sent by the purported sender.

#### Sec. 9. [302A.015] LEGAL RECOGNITION OF ELECTRONIC RECORDS AND SIGNATURES.

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

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

(c) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

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

(e) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Subd. 2. ELECTRONIC RECORDS AND SIGNATURES.** For purposes of this chapter:

(1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

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(2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

(3) if a provision requires a record to be in writing, an electronic record satisfies the requirement; and

(4) if a provision requires a signature, an electronic signature satisfies the requirement.

Sec. 10. Minnesota Statutes 2000, section 302A.115, subdivision 5, is amended to read:

**Subd. 5. USE OF NAME BY SUCCESSOR CORPORATION.** A corporation that is merged the surviving organization in a merger with another domestic or foreign corporation ~~one or more other organizations,~~ or that is incorporated by the reorganization of one or more domestic or foreign corporations ~~organizations,~~ or that acquires by sale, lease, or other disposition to or exchange with a domestic corporation an organization all or substantially all of the assets of another domestic or foreign corporation organization, including its name, may have the same name as that used in this state by any of the other corporations ~~organizations,~~ if the other corporation organization whose name is sought to be used was incorporated ~~organized~~ under the laws of, or is authorized to transact business in, this state.

Sec. 11. Minnesota Statutes 2000, section 302A.135, is amended by adding a subdivision to read:

**Subd. 6. INVESTMENT COMPANIES.** Notwithstanding any contrary provision of this chapter, the board of directors of a corporation that is registered as an open-end management investment company under the Investment Company Act of 1940 may, without shareholder approval, increase or decrease, but not below the then-outstanding shares, the aggregate number of shares the corporation has authority to issue, including shares of any class or series, unless a provision has been included in the corporation's articles prohibiting the board from increasing or decreasing the aggregate number of shares, or any class or series of shares, as applicable, that the corporation has authority to issue.

Sec. 12. Minnesota Statutes 2000, section 302A.231, is amended to read:

**302A.231 BOARD MEETINGS.**

**Subdivision 1. TIME; PLACE.** Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subdivision 2. If the board fails to select a place for a meeting, the meeting shall be held at the principal executive office, unless the articles or bylaws provide otherwise. The board of directors may determine under subdivision 2 that a meeting of the board of directors shall be held solely by means of remote communication.

**Subd. 2. ELECTRONIC COMMUNICATIONS MEETINGS SOLELY BY MEANS OF REMOTE COMMUNICATION.** ~~(a) A conference~~ Any meeting among directors by any means of may be conducted solely by one or more means of remote

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communication through which all of the directors may ~~simultaneously hear participate~~ participate with each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be meeting required by subdivision 3 for a meeting 4, and if the number of directors participating in the conference would be meeting is sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

(b) Subd. 3. **PARTICIPATION IN MEETINGS BY MEANS OF REMOTE COMMUNICATION.** A director may participate in a board meeting ~~not described in paragraph (a)~~ by any means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear participate with each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

Subd. 3, 4. **CALLING MEETINGS; NOTICE.** Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to section 302A.171, subdivision 2, at least three days' notice, to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

Subd. 4, 5. **PREVIOUSLY SCHEDULED MEETINGS.** If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Subd. 5, 6. **WAIVER OF NOTICE.** A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

Sec. 13. Minnesota Statutes 2000, section 302A.239, subdivision 1, is amended to read:

Subdivision 1. **METHOD.** An action required or permitted to be taken at a board meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

Sec. 14. Minnesota Statutes 2000, section 302A.239, subdivision 2, is amended to read:

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Subd. 2. **EFFECTIVE TIME.** The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of directors, unless a different effective time is provided in the written action.

Sec. 15. Minnesota Statutes 2000, section 302A.431, subdivision 3, is amended to read:

Subd. 3. **TIME; PLACE.** A regular meeting, if any, shall be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subdivision 2 shall be held in the county where the principal executive office of the corporation is located. To the extent authorized in the articles or bylaws, the board of directors may determine that a regular meeting of the shareholders shall be held solely by means of remote communication in accordance with section 302A.436, subdivision 2.

Sec. 16. Minnesota Statutes 2000, section 302A.433, subdivision 3, is amended to read:

Subd. 3. **TIME; PLACE.** Special meetings shall be held on the date and at the time and place fixed by the chief executive officer, the chief financial officer, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subdivision 2 shall be held in the county where the principal executive office is located. To the extent authorized in the articles or bylaws, the board of directors may determine that a special meeting of the shareholders shall be held solely by means of remote communication in accordance with section 302A.436, subdivision 2.

Sec. 17. Minnesota Statutes 2000, section 302A.436, is amended to read:

**302A.436 ELECTRONIC REMOTE COMMUNICATIONS FOR SHAREHOLDER MEETINGS.**

Subdivision 1. **ELECTRONIC CONFERENCES CONSTRUCTION AND APPLICATION.** ~~and~~ This section shall be construed and applied to:

- (1) facilitate remote communication consistent with other applicable law; and
- (2) be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

Subd. 2. **SHAREHOLDER MEETINGS HELD SOLELY BY MEANS OF REMOTE COMMUNICATION.** To the extent authorized in the articles or bylaws or and determined by the board of a closely held corporation, a conference among regular or special meeting of shareholders may be held solely by any combination of means of remote communication through which the shareholders may simultaneously hear each other during participate in the conference constitutes a regular or special meeting of shareholders, if the same notice of the meeting is given of the conference to every holder of shares entitled to vote as would be required by this chapter for a meeting, and if the number of shares held by the shareholders participating in the conference meeting would be sufficient to constitute a quorum at a meeting. Participation in a

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conference by a shareholder by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 302A.449 are met.

Subd. 2 3. **PARTICIPATION IN SHAREHOLDER MEETINGS BY ELECTRONIC MEANS OF REMOTE COMMUNICATION.** ~~If and To the extent authorized in the articles or bylaws or and determined by the board of a closely held corporation, a shareholder may participate in not physically present in person or by proxy at a regular or special meeting of shareholders not described in subdivision 1 by any means of communication through which the shareholder, other shareholders so participating, and all shareholders physically present at the meeting may simultaneously hear each other during the meeting may, by means of remote communication, participate in a meeting of shareholders held at a designated place. Participation in a meeting by a shareholder by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 302A.449 are met.~~

Subd. 3 4. **REQUIREMENTS FOR MEETINGS HELD SOLELY BY MEANS OF REMOTE COMMUNICATION AND FOR PARTICIPATION IN MEETINGS BY ELECTRONIC MEANS OF REMOTE COMMUNICATION.** ~~In any meeting of shareholders held solely by means of remote communication under subdivision 2 or in any meeting of shareholders held at a designated place in which one or more shareholders participate by means of remote communication under subdivision 3:~~

~~(1) the corporation shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder; and~~

~~(2) the corporation shall implement reasonable measures to provide each shareholder participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:~~

~~(i) read or hear the proceedings of the meeting substantially concurrently with those proceedings;~~

~~(ii) if allowed by the procedures governing the meeting, have the shareholder's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and~~

~~(iii) if otherwise entitled, vote on matters submitted to the shareholders.~~

Subd. 5. **NOTICE TO SHAREHOLDERS.** ~~(a) Any notice to shareholders given by the corporation under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the shareholder to whom the notice is given is effective when given. The notice is deemed given:~~

~~(1) if by facsimile communication, when directed to a telephone number at which the shareholder has consented to receive notice;~~

~~(2) if by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;~~

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(3) if by a posting on an electronic network on which the shareholder has consented to receive notice, together with separate notice to the shareholder of the specific posting, upon the later of:

(i) the posting; and

(ii) the giving of the separate notice; and

(4) if by any other form of electronic communication by which the shareholder has consented to receive notice, when directed to the shareholder.

An affidavit of the secretary, other authorized officer, or authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

(b) Consent by a shareholder to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the shareholder, provided that no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.

**Subd. 6. REVOCATION.** Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the shareholder submitting the ballot, vote, authorization, or consent so long as the revocation is received by an officer of the corporation at or before the meeting or before an action without a meeting is effective according to section 302A.441.

**Subd. 7. WAIVER.** Waiver of notice by a shareholder of a meeting by means of authenticated electronic communication described in subdivisions 1 and 2 may be given in the manner provided in section 302A.435, subdivision 4. Participation in a meeting by means of remote communication described in subdivisions 1 and 2 and 3 is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

Sec. 18. Minnesota Statutes 2000, section 302A.441, is amended to read:

**302A.441 ACTION WITHOUT A MEETING.**

An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the shareholders entitled to vote on that action. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by all of those shareholders, unless a different effective time is provided in the written action.

Sec. 19. Minnesota Statutes 2000, section 302A.449, subdivision 1, is amended to read:

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Subdivision 1. **AUTHORIZATION.** (a) A shareholder may cast or authorize the casting of a vote by (1) filing a written appointment of a proxy, signed by the shareholder, with an officer of the corporation at or before the meeting at which the appointment is to be effective, or (2) telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the shareholder, of an appointment of a proxy with the corporation or the corporation's duly authorized agent at or before the meeting at which the appointment is to be effective. In addition, a shareholder of a publicly held corporation may cast or authorize the casting of a vote by a proxy by transmitting to the corporation or the corporation's duly authorized agent before the meeting, an appointment of a proxy by means of a telegram, cablegram, or any other form of electronic transmission, including telephonic transmission, whether or not accompanied by written instructions of the shareholder. The telephonic transmission or authenticated electronic transmission communication must set forth or be submitted with information from which it can be determined that the appointment was authorized by the shareholder. If it is determined reasonably concluded that a telegram, cablegram, or other electronic telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination shall specify the information upon which they relied to make that determination. A proxy so appointed may vote on behalf of the shareholder, or otherwise participate, in a meeting by remote communication according to section 302A.436 to the extent the shareholder appointing the proxy would have been entitled to participate by remote communication according to section 302A.436 if the shareholder did not appoint the proxy.

(b) A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used, provided that the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

(c) An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or otherwise authorized consented to by authenticated electronic communication by any one of them, unless the corporation receives from any one of those shareholders written notice or authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

Sec. 20. Minnesota Statutes 2000, 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;

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(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 constituent organization, except as provided in subdivision 3, and except for a plan of merger adopted under section 302A.626;

(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, except as provided in subdivision 3; or

(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. 21. Minnesota Statutes 2000, 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~~ organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, 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~~ organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, 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:

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(a) (1) the name of the subsidiary or subsidiaries, the name of the parent and the name of the surviving corporation;

(b) (2) 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) (3) 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

(d) (4) 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. 22. Minnesota Statutes 2000, section 302A.621, subdivision 2, is amended to read:

Subd. 2. **NOTICE TO SHAREHOLDERS OF SUBSIDIARY.** Notice of the action, including a copy of the plan of merger, shall be mailed given to each shareholder, other than the parent and any subsidiary, of each subsidiary that is a constituent corporation in the merger before, or within ten days after, the effective date of the merger.

Sec. 23. Minnesota Statutes 2000, section 302A.621, subdivision 3, is amended to read:

Subd. 3. **ARTICLES OF MERGER; CONTENTS OF ARTICLES.** Articles of merger shall be prepared that contain:

(a) (1) the plan of merger;

(b) (2) the number of outstanding shares of each class and series of each subsidiary that is a constituent corporation in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of shares of each class and series of the subsidiary or subsidiaries, other than classes or series that, absent this section, would otherwise not be entitled to

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vote on the merger, owned by the parent directly, or indirectly through related corporations organizations; and

(e) The date a copy of the plan of merger was mailed to shareholders, other than the parent or a subsidiary, of each subsidiary that is a constituent corporation in the merger; and

(d) (3) a statement that the plan of merger has been approved by the parent under this section.

Sec. 24. Minnesota Statutes 2000, section 302A.621, subdivision 4, is amended to read:

Subd. 4. **ARTICLES SIGNED, FILED.** Within 30 days after a copy of the plan of merger is mailed to shareholders of each subsidiary that is a constituent corporation to the merger, or upon waiver of the mailing by the holders of all outstanding shares of each subsidiary that is a constituent corporation to the merger, The articles of merger shall be signed on behalf of the parent and filed with the secretary of state.

Sec. 25. [302A.626] **MERGER TO EFFECT A HOLDING COMPANY REORGANIZATION.**

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

(b) "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section.

(c) "Parent constituent corporation" means the parent that merges with or into the subsidiary constituent corporation.

(d) "Subsidiary constituent corporation" means the subsidiary that the parent constituent corporation merges with or into in the merger.

Subd. 2. AUTHORIZATION. Unless its articles expressly provide otherwise, and subject to subdivision 3, a parent constituent corporation may merge with or into a subsidiary constituent corporation without a vote of the shareholders of the parent constituent corporation.

Subd. 3. REQUIREMENTS. A merger may be accomplished under this section only if each of the following requirements is met:

(1) the holding company and the constituent corporations to the merger are each organized under this chapter;

(2) at all times following the issuance of shares until the consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

(3) immediately before the consummation of a merger under this section, the subsidiary constituent corporation is an indirect wholly owned subsidiary of the parent constituent corporation and a direct wholly owned subsidiary of the holding company;

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(4) the parent constituent corporation and the subsidiary constituent corporation are the only constituent corporations to the merger;

(5) immediately after the merger becomes effective, the surviving corporation becomes or remains a direct wholly owned subsidiary of the holding company;

(6) each share or fraction of a share of the parent constituent corporation outstanding immediately before the effective time of the merger is converted in the merger into a share or equal fraction of a share of the holding company having the same designation and relative rights and preferences, and the same restrictions thereon, as the share or fraction of a share of the parent constituent corporation being converted in the merger;

(7) the articles and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares, if the exchange, reclassification, or cancellation has become effective;

(8) the articles and bylaws of the surviving corporation immediately following the effective time of the merger are identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares, if the exchange, reclassification, or cancellation has become effective, except that:

(i) the articles of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation, other than the election or removal of directors of the surviving corporation, that requires for its adoption under this chapter or its articles the approval of the shareholders of the surviving corporation shall, by specific reference to this section, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this chapter and/or by the articles of the surviving corporation; and

(ii) the articles of the surviving corporation may be amended in the merger to reduce the number of classes, series, and shares that the surviving corporation is authorized to issue;

(9) the directors of the parent constituent corporation become or remain the directors of the holding company immediately after the merger becomes effective;

(10) the board of directors of the parent constituent corporation determines that the shareholders of the parent constituent corporation will not recognize gain or loss

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for United States federal income tax purposes; and

(11) a resolution approved by the affirmative vote of a majority of the directors of the parent constituent corporation present sets forth a plan of merger that contains provisions addressing the requirements of clauses (1) to (10).

**Subd. 4. REMOVAL OF DIRECTORS OF SURVIVING CORPORATION.**

Neither subdivision 3, clause (8), item (i), nor any provisions of the surviving corporation's articles required by that item may be construed to require approval of the shareholders of the holding company to elect or remove directors of the surviving corporation.

**Subd. 5. INTERACTION WITH CERTAIN OTHER SECTIONS.**

To the extent restrictions under section 302A.671 or 302A.673 applied to the parent constituent corporation or any of its shareholders at the effective time of the merger, those restrictions apply to the holding company and its shareholders immediately after the merger becomes effective as though the holding company were the parent constituent corporation. No shareholder who, immediately before the merger becomes effective, was not an acquiring person or an interested shareholder of the parent constituent corporation shall, solely by reason of the merger, become an acquiring person or interested shareholder of the holding company.

**Subd. 6. SHARE CERTIFICATES.**

If the name of the holding company at the time the merger takes effect is the same as the name of the parent constituent corporation immediately before that time, the shares of the holding company into which the shares of the parent constituent corporation are converted in the merger must, unless new certificates are issued, be represented by the share certificates that previously represented shares of the parent constituent corporation.

**Subd. 7. ARTICLES OF MERGER; FILING WITH SECRETARY OF STATE.** (a) Articles of merger must be prepared that contain:

(1) the plan of merger; and

(2) a statement that the plan of merger was adopted under this section.

(b) The articles of merger must be signed on behalf of the parent constituent corporation and filed with the secretary of state.

**Subd. 8. CERTIFICATE.** The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative.

**Subd. 9. NONEXCLUSIVITY.** A merger between a parent and a subsidiary may be accomplished under sections 302A.611, 302A.613, and 302A.615, or section 302A.621 instead of this section, in which case this section does not apply.

Sec. 26. Minnesota Statutes 2000, section 302A.673, subdivision 1, is amended to read:

**Subdivision 1. BUSINESS COMBINATION WITH INTERESTED SHAREHOLDER; APPROVAL BY DIRECTORS.** (a) Notwithstanding anything to the contrary contained in this chapter (except the provisions of subdivision 3), an issuing

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public corporation may not engage in any business combination, or vote, consent, or otherwise act to authorize a subsidiary of the issuing public corporation to engage in any business combination, with, with respect to, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with, any interested shareholder of the issuing public corporation or any affiliate or associate of the interested shareholder for a period of four years following the interested shareholder's share acquisition date unless the business combination or the acquisition of shares made by the interested shareholder on the interested shareholder's share acquisition date is approved before the interested shareholder's share acquisition date, or on the share acquisition date but prior to the interested shareholder's becoming an interested shareholder on the share acquisition date, by a committee of the board of the issuing public corporation formed in accordance with paragraph (d).

(b) If a good faith definitive proposal regarding a business combination is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d) shall consider and take action on the proposal and respond in writing within 30 days after receipt of the proposal by the issuing public corporation, setting forth its decision regarding the proposal.

(c) If a good faith definitive proposal to acquire shares is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d), shall consider and take action on the proposal and respond in writing within 30 days after receipt of the proposal by the issuing public corporation, setting forth its decision regarding the proposal.

(d)(1) When a business combination or acquisition of shares is proposed pursuant to this subdivision, the board shall promptly form a committee composed solely of all of the board's one or more disinterested directors. The committee shall take action on the proposal by the affirmative vote of a majority of committee members. No larger proportion or number of votes shall be required. Notwithstanding the provisions of section 302A.241, subdivision 1, the committee shall not be subject to any direction or control by the board with respect to the committee's consideration of, or any action concerning, a business combination or acquisition of shares pursuant to this section.

(2) ~~A committee formed pursuant to this subdivision shall be composed of one or more members. Only disinterested directors may be members of a committee formed pursuant to this subdivision. However,~~ If the board has no disinterested directors, the board shall select three or more disinterested persons to be committee members. Committee members are deemed to be directors for purposes of sections 302A.251, 302A.255, and 302A.521.

(3) For purposes of this subdivision, a director or person is "disinterested" if the director or person is neither an officer nor an employee, nor has been an officer or employee within five years preceding the formation of the committee pursuant to this section, of the issuing public corporation, or of a related organization.

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



Sec. 27. Minnesota Statutes 2000, section 302A.734, is amended to read:

**302A.734 EFFECTIVE DATE OF DISSOLUTION; CERTIFICATE.**

Subdivision 1. **EFFECTIVE DATE.** When the articles of dissolution have been filed with the secretary of state, or on a later date or a later time each within 30 days after filing if the articles of dissolution so provide, the corporation is dissolved.

Subd. 2. **CERTIFICATE.** The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

- (1) the name of the corporation;
- (2) the date and time the articles of dissolution were filed with the secretary of state is effective; and
- (3) a statement that the corporation is dissolved at the effective date and time of the dissolution.

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## ARTICLE 2

### LIMITED LIABILITY COMPANIES

Section 1. Minnesota Statutes 2000, section 322B.03, is amended by adding a subdivision to read:

Subd. 6a. **AUTHENTICATED.** “Authenticated” means, with respect to an electronic communication, that the communication is delivered to the principal place of business of the limited liability company, or to a manager or agent of the limited liability company authorized by the limited liability company to receive the communication, and that the communication sets forth information from which the limited liability company can reasonably conclude that the communication was sent by the purported sender.

Sec. 2. Minnesota Statutes 2000, section 322B.03, is amended by adding a subdivision to read:

Subd. 17b. **ELECTRONIC COMMUNICATION.** “Electronic communication” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication, and that may be directly reproduced in paper form by the recipient through an automated process.

Sec. 3. Minnesota Statutes 2000, section 322B.03, subdivision 36a, is amended to read:

Subd. 36a. **PARENT.** “Parent” of a specified limited liability company means a limited liability company or a corporation that directly or indirectly through related organizations owns more than 50 percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

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

Sec. 4. Minnesota Statutes 2000, section 322B.03, is amended by adding a subdivision to read:

Subd. 41a. **REMOTE COMMUNICATION.** “Remote communication” means communication via electronic communication, conference telephone, video conference, the Internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Sec. 5. Minnesota Statutes 2000, section 322B.03, subdivision 45a, is amended to read:

Subd. 45a. **SUBSIDIARY.** “Subsidiary” of a specified limited liability company means a limited liability company or a corporation having more than 50 percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly through related organizations by the specified limited liability company.

#### Sec. 6. **[322B.04] LEGAL RECOGNITION OF ELECTRONIC RECORDS AND SIGNATURES.**

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

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

(c) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

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

(e) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 2. **ELECTRONIC RECORDS AND SIGNATURES.** For purposes of this chapter:

(1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

(2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

(3) if a provision requires a record to be in writing, an electronic record satisfies the requirement; and

(4) if a provision requires a signature, an electronic signature satisfies the requirement.

Sec. 7. Minnesota Statutes 2000, section 322B.12, subdivision 4, is amended to read:

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

Subd. 4. **USE OF A NAME BY A SURVIVING ORGANIZATION.** A limited liability company that is merged the surviving organization in a merger with another limited liability company or domestic or foreign corporation one or more other organizations, or that is organized by the reorganization of one or more limited liability companies or domestic or foreign corporations organizations, or that acquires by sale, lease, or other disposition to or exchange with a limited liability company an organization all or substantially all of the assets of another limited liability company or domestic or foreign corporation organization, including its name, may have the same name as that used in this state by any of the other limited liability companies or domestic or foreign corporations organizations, if the other limited liability company or domestic or foreign corporation organization whose name is sought to be used was organized under the laws of, or is authorized to transact business in, this state.

Sec. 8. Minnesota Statutes 2000, 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 bylaws, except that a meeting called by or at the demand of a member pursuant to subdivision 2 must be held in the county where the principal executive office of the limited liability company is located. To the extent authorized in the articles, a member control agreement, or the bylaws, the board of governors may determine that a regular meeting of the members shall be held solely by means of remote communication in accordance with section 322B.343, subdivision 2.

Sec. 9. Minnesota Statutes 2000, 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 bylaws to call a meeting, except that a special meeting called by or at the demand of a member or members pursuant to subdivision 2 must be held in the county where the principal executive office is located. To the extent authorized in the articles, a member control agreement, or the bylaws, the board of governors may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with section 322B.343, subdivision 2.

Sec. 10. Minnesota Statutes 2000, section 322B.343, is amended to read:

**322B.343 ELECTRONIC REMOTE COMMUNICATIONS FOR MEMBER MEETINGS.**

Subdivision 1. **ELECTRONIC CONFERENCES CONSTRUCTION AND APPLICATION.** If and This section shall be construed and applied to:

- (1) facilitate remote communication consistent with other applicable law; and
- (2) be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

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**Subd. 2. MEMBER MEETINGS HELD SOLELY BY MEANS OF REMOTE COMMUNICATION.** To the extent authorized in the articles, a member control agreement, or the bylaws, ~~or~~ and determined by the board of governors of a closely held limited liability company, a conference among members regular or special meeting of members may be held solely by any combination of means of remote communication through which the members may simultaneously hear each other during participate in the conference constitutes a regular or special meeting of members, if the same notice of the meeting 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 meeting would be sufficient to constitute a quorum at a meeting. Participation in a conference by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

**Subd. 2- 3. PARTICIPATION BY ELECTRONIC MEANS IN MEMBER MEETINGS BY MEANS OF REMOTE COMMUNICATION.** ~~If and~~ To the extent authorized in the articles, a member control agreement, or the bylaws, ~~or~~ determined by the board of governors of a closely held limited liability company, a member ~~may participate in~~ not physically present in person or by proxy at 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 may, by means of remote communication, participate in a meeting of members held at a designated place. Participation in a meeting by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

**Subd. 4. REQUIREMENTS FOR MEETINGS HELD SOLELY BY MEANS OF REMOTE COMMUNICATION AND FOR PARTICIPATION BY MEANS OF REMOTE COMMUNICATION.** In any meeting of members held solely by means of remote communication under subdivision 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subdivision 3:

(1) the limited liability company shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and

(2) the limited liability company shall implement reasonable measures to provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:

(i) read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(ii) if allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and

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(iii) if otherwise entitled, vote on matters submitted to the members.

**Subd. 5. NOTICE TO MEMBERS.** (a) Any notice to members given by the limited liability company under any provision of this chapter, the articles, a member control agreement, or the bylaws by a form of electronic communication consented to by the member to whom the notice is given is effective when given. The notice is deemed given:

(1) if by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;

(2) if by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;

(3) if by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:

(i) the posting; and

(ii) the giving of the separate notice; and

(4) if by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.

An affidavit of the secretary, other authorized manager, or authorized agent of the limited liability company, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

(b) Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The limited liability company is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.

**Subd. 6. REVOCATION.** Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote, authorization, or consent so long as the revocation is received by a manager of the limited liability company at or before the meeting or before an action without a meeting is effective according to section 322B.656.

**Subd. 3. 7. WAIVER.** Waiver of notice by a member of a meeting by means of authenticated electronic communication described in subdivisions 1 and 2 may be given in the manner provided in section 322B.34, subdivision 4. Participation in a meeting by means of remote communication described in subdivisions 1 and 2 and 3 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

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

Sec. 11. Minnesota Statutes 2000, 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, or consented to by authenticated electronic communication, by all of the members. If the articles or a member control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

Sec. 12. Minnesota Statutes 2000, section 322B.35, subdivision 2, is amended to read:

Subd. 2. **EFFECTIVE TIME.** The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.

Sec. 13. Minnesota Statutes 2000, section 322B.363, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** (a) A member may cast or authorize the casting of a vote by (1) filing a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective, or (2) telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the member, of an appointment of a proxy with the limited liability company or the limited liability company's duly authorized agent at or before the meeting at which the appointment is to be effective. The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment was authorized by the member. If it is reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination shall specify the information upon which they relied to make that determination. A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication according to section 322B.343, to the extent the member appointing the proxy would have been entitled to participate by remote communication according to section 322B.343, if the member did not appoint the proxy.

(b) A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission, provided that the limited liability company has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the member. Any copy, facsimile, telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

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(c) An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or ~~otherwise authorized~~ consented to by authenticated electronic communication, by any one of them, unless the limited liability company receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

Sec. 14. Minnesota Statutes 2000, section 322B.643, is amended to read:

**322B.643 BOARD OF GOVERNORS MEETINGS.**

Subdivision 1. **TIME AND PLACE.** Meetings of the board of governors may be held from time to time as provided in the articles of organization, a member control agreement, or bylaws at any place within or without the state that the board of governors may select or by any means described in subdivision 2. If the board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member control agreement, or bylaws provide otherwise. The board of governors may determine under subdivision 2 that a meeting of the board of governors shall be held solely by means of remote communication.

Subd. 2. **ELECTRONIC COMMUNICATIONS MEETINGS SOLELY BY MEANS OF REMOTE COMMUNICATION.** ~~(a) A conference~~ Any meeting among governors may be conducted solely by any one or more means of remote communication through which all of the governors may simultaneously hear participate with each other during the conference constitutes a board of governors meeting, if the same notice is given of the conference meeting as would be required by subdivision 3 for a meeting 4, and if the number of governors participating in the conference meeting would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

~~(b) Subd. 3.~~ **PARTICIPATION IN MEETINGS BY MEANS OF REMOTE COMMUNICATION.** A governor may participate in a board of governors meeting ~~not described in paragraph (a) by any means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case through which the governor, other governors so participating, and all governors physically present at the meeting may simultaneously hear participate with each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.~~

Subd. ~~3,~~ **4. CALLING MEETINGS AND NOTICE.** Unless the articles of organization, a member control agreement, or bylaws provide for a different time period, a governor may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings under section 322B.60, subdivision 2, at least three days' notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles, a member control agreement, or bylaws require it.

Subd. ~~4,~~ **5. PREVIOUSLY SCHEDULED MEETINGS.** If the day or date, time, and place of a board of governors meeting have been provided in the articles, a member

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control agreement, or bylaws, or announced at a previous meeting of the board of governors, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Subd. 5. **6. WAIVER OF NOTICE.** A governor may waive notice of a meeting of the board of governors. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except where the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

Sec. 15. Minnesota Statutes 2000, 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, or consented to by authenticated electronic communication, by all of the governors. If the articles or a member control agreement so provide, any action, other than an action requiring member approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of governors that would be required to take the same action at a meeting of the board of governors at which all governors were present.

Sec. 16. Minnesota Statutes 2000, section 322B.656, subdivision 2, is amended to read:

Subd. 2. **EFFECTIVE TIME.** The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of governors, unless a different effective time is provided in the written action.

Sec. 17. Minnesota Statutes 2000, section 322B.826, is amended to read:

**322B.826 EFFECTIVE DATE OF TERMINATION AND CERTIFICATE OF TERMINATION.**

Subdivision 1. **EFFECTIVE DATE.** When the articles of termination have been filed with the secretary of state, or on a later date or a later time each within 30 days after filing if the articles of termination so provide, the limited liability company is terminated.

Subd. 2. **CERTIFICATE.** The secretary of state shall issue to the dissolved limited liability company or its legal representative a certificate of termination that contains:

- (1) the name of the limited liability company;
- (2) the date and time the articles of termination were filed with the secretary of state is effective; and
- (3) a statement that the limited liability company is terminated at the effective date and time of the termination.

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



## ARTICLE 3

## NONPROFIT CORPORATIONS

Section 1. Minnesota Statutes 2000, section 317A.011, is amended by adding a subdivision to read:

Subd. 3a. AUTHENTICATED. "Authenticated" means, with respect to an electronic communication, that the communication is delivered to the principal place of business of the corporation, or to an officer or agent of the corporation authorized by the corporation to receive the communication, and that the communication sets forth information from which the corporation can reasonably conclude that the communication was sent by the purported sender.

Sec. 2. Minnesota Statutes 2000, section 317A.011, is amended by adding a subdivision to read:

Subd. 7a. ELECTRONIC COMMUNICATION. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication, and that may be directly reproduced in paper form by the recipient through an automated process.

Sec. 3. Minnesota Statutes 2000, section 317A.011, is amended by adding a subdivision to read:

Subd. 18a. REMOTE COMMUNICATION. "Remote communication" means communication via electronic communication, conference telephone, video conference, the Internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

**Sec. 4. [317A.015] LEGAL RECOGNITION OF ELECTRONIC RECORDS AND SIGNATURES.**

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

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

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

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

(e) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 2. ELECTRONIC RECORDS AND SIGNATURES. For purposes of this chapter:

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

(1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

(2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

(3) if a provision requires a record to be in writing, an electronic record satisfies the requirement; and

(4) if a provision requires a signature, an electronic signature satisfies the requirement.

Sec. 5. Minnesota Statutes 2000, section 317A.231, is amended to read:

**317A.231 BOARD MEETINGS.**

Subdivision 1. **TIME; PLACE.** Meetings of the board may be held as provided in the articles or bylaws in or out of this state. Unless the articles or bylaws provide otherwise, a meeting of the board must be held at least once per year. If the articles or bylaws or the board fail to select a place for a meeting, the meeting must be held at the registered office. The board of directors may determine under subdivision 2 that a meeting of the board of directors shall be held solely by means of remote communication.

Subd. 2. **ELECTRONIC COMMUNICATIONS MEETINGS SOLELY BY MEANS OF REMOTE COMMUNICATION.** ~~(a) A conference~~ Any meeting among directors may be conducted solely by a one or more means of remote communication through which all of the directors may simultaneously hear each other during participate in the conference is a board meeting, if the same notice is given of the conference as would be meeting required for a meeting by subdivision 4, and if the number of directors participating in the conference meeting is sufficient to constitute a quorum at a meeting. Participation in a meeting by this that means is personal constitutes presence at the meeting.

~~(b) Subd. 3. PARTICIPATION IN MEETINGS BY MEANS OF REMOTE COMMUNICATION. A director may participate in a board meeting by any means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case through which the that director, other directors so participating, and all directors physically present at the meeting may simultaneously hear participate with each other during the meeting. Participation in a meeting by this that means is personal constitutes presence at the meeting.~~

Subd. 3 4. **CALLING MEETINGS; NOTICE.** (a) Unless the articles or bylaws provide otherwise, a director may call a board meeting by giving five days' notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

(b) If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, notice is not required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

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

Subd. 4 5. **WAIVER OF NOTICE.** A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, unless the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting.

Sec. 6. Minnesota Statutes 2000, section 317A.239, subdivision 1, is amended to read:

Subdivision 1. **METHOD.** An action required or permitted to be taken at a board meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the directors. If the articles so provide, an action, other than an action requiring member approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

Sec. 7. Minnesota Statutes 2000, section 317A.239, subdivision 2, is amended to read:

Subd. 2. **EFFECTIVE TIME.** The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of directors, unless a different effective time is provided in the written action.

Sec. 8. Minnesota Statutes 2000, section 317A.431, subdivision 3, is amended to read:

Subd. 3. **TIME; PLACE.** An annual meeting of members must be held at the time and place stated in or fixed in accordance with the articles or bylaws. If a place is not stated or if a demand for a meeting is made under subdivision 2, the meeting must be held in the county where the corporation's registered office is located. To the extent authorized in articles or bylaws, the board of directors may determine that an annual meeting of the members shall be held solely by means of remote communication in accordance with section 317A.450, subdivision 2.

Sec. 9. Minnesota Statutes 2000, section 317A.433, subdivision 3, is amended to read:

Subd. 3. **TIME; PLACE.** Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the articles, bylaws, or by the president or the board. If a special meeting is demanded by the members, the meeting must be held in the county where the corporation's registered office is located. To the extent authorized in the articles or bylaws, the board of directors may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with section 317A.450, subdivision 2.

Sec. 10. Minnesota Statutes 2000, section 317A.445, is amended to read:

317A.445 **UNANIMOUS ACTION WITHOUT A MEETING.**

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

An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by all of those members, unless a different effective time is provided in the written action. When this chapter requires a certificate concerning an action to be filed with the secretary of state, the officers signing the certificate must indicate that the action was taken under this section.

**Sec. 11. [317A.450] REMOTE COMMUNICATIONS FOR MEMBER MEETINGS.**

Subdivision 1. CONSTRUCTION AND APPLICATION. This section shall be construed and applied to:

- (1) facilitate remote communication consistent with other applicable law; and
- (2) be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

Subd. 2. MEMBER MEETINGS HELD SOLELY BY MEANS OF REMOTE COMMUNICATION. To the extent authorized in the articles or bylaws and determined by the board, an annual or special meeting of members may be held solely by one or more means of remote communication, if notice of the meeting is given to every member entitled to vote, and if the number of voting members participating in the meeting is sufficient to constitute a quorum at a meeting. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 317A.453 are met.

Subd. 3. PARTICIPATION IN MEMBER MEETINGS BY MEANS OF REMOTE COMMUNICATION. To the extent authorized in the articles or bylaws and determined by the board, a member not physically present in person or by proxy at an annual or special meeting of members may, by means of remote communication, participate in a meeting of members held at a designated place. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 317A.453 are met.

Subd. 4. REQUIREMENTS FOR MEETINGS HELD SOLELY BY MEANS OF REMOTE COMMUNICATION AND FOR PARTICIPATION BY MEANS OF REMOTE COMMUNICATION. In any meeting of members held solely by means of remote communication under subdivision 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subdivision 3:

- (1) the corporation shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and
- (2) the corporation shall implement reasonable measures to provide each member participating by means of remote communication with a reasonable opportunity to

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participate in the meeting, including an opportunity to:

(i) read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(ii) if allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and

(iii) if otherwise entitled, vote on matters submitted to the members.

**Subd. 5. NOTICE TO MEMBERS.** (a) Any notice to members given by the corporation under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the member to whom the notice is given is effective when given. The notice is deemed given:

(1) if by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;

(2) if by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;

(3) if by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:

(i) the posting; and

(ii) the giving of the separate notice; and

(4) if by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.

An affidavit of the secretary, other authorized officer, or authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

(b) Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.

**Subd. 6. WAIVER.** Waiver of notice by a member of a meeting by means of authenticated electronic communication may be given in the manner provided in section 317A.435, subdivision 3. Participation in a meeting by means of remote communication described in subdivisions 2 and 3 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

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

Sec. 12. Minnesota Statutes 2000, section 317A.453, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** If the articles or bylaws permit proxy voting, a member may appoint a proxy to cast or authorize the casting of a vote or otherwise act for the member by signing an (1) filing a nonelectronic written appointment form either personally or of a proxy, signed by the member, with an attorney-in-fact officer of the corporation at or before the meeting at which the appointment is to be effective, or (2) telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the member, of an appointment of a proxy with the corporation or the corporation's duly authorized agent at or before the meeting at which the appointment is to be effective.

Sec. 13. Minnesota Statutes 2000, section 317A.733, subdivision 3, is amended to read:

Subd. 3. **EFFECTIVE DATE.** When the articles of dissolution have been filed with the secretary of state, or on a later date or a later time each within 30 days after filing if the articles of dissolution so provide, the corporation is dissolved.

Sec. 14. Minnesota Statutes 2000, section 317A.733, subdivision 4, is amended to read:

Subd. 4. **CERTIFICATE.** The secretary of state shall issue to the dissolved corporation a certificate of dissolution that contains:

- (1) the name of the corporation;
- (2) the date and time the articles of dissolution were filed with the secretary of state is effective; and
- (3) a statement that the corporation is dissolved at the effective date and time of the dissolution.

Sec. 15. **REPEALER**

Minnesota Statutes 2000, section 317A.449, is repealed.

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## ARTICLE 4

### MISCELLANEOUS CHANGES

Section 1. Minnesota Statutes 2000, section 303.11, is amended to read:

**303.11 NOTICE OF NAME CHANGES, WHERE FILED.**

Each foreign corporation authorized to transact business in this state, shall, whenever it changes its name, dissolves, or merges ~~into another corporation,~~ file in the office of the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the corporation is organized.

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

Sec. 2. Minnesota Statutes 2000, section 322A.03, is amended to read:

**322A.03 RESERVATION OF NAME.**

(a) The exclusive right to the use of a name may be reserved by:

(1) any person intending to organize a limited partnership under sections 322A.01 to 322A.87 and to adopt that name;

(2) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) any foreign limited partnership intending to register in this state and adopt that name; and

(4) any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

(b) ~~The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. On finding that the name is available for use by a domestic or foreign limited partnership, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee according to section 302A.117.~~

Sec. 3. Minnesota Statutes 2000, 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; and

(5) the name of the jurisdiction under whose law the foreign limited liability partnership was originally registered.

(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.

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

(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 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. 4. Minnesota Statutes 2000, section 333.055, subdivision 4, is amended to read:

Subd. 4. The secretary of state shall accept for filing all certificates and renewals thereof which comply with the provisions of sections 333.001 to 333.06 and which are accompanied by the prescribed fees, notwithstanding the fact that the assumed name disclosed therein may not be distinguishable from one or more other assumed names already filed with the secretary of state. ~~In the event of duplication or similarity, the secretary of state shall, within 20 days after the filing, notify in writing each previously filed business holding a certificate for the assumed name or a similar assumed name, of the duplication or similarity, including in the notice the name and last known address of the person so filing.~~ The secretary of state shall not accept for filing a certificate that discloses an assumed name that is not distinguishable from a corporate, limited liability company, limited liability partnership, cooperative, or limited partnership name in use or reserved in this state by another or a trade or service mark registered with the secretary of state, unless there is filed with the certificate a written consent, court decree of prior right, or affidavit of nonuser of the kind required by section 302A.115, subdivision 1, clause (d). The secretary of state shall determine whether a name is distinguishable from another name for purposes of this subdivision.

Presented to the governor March 28, 2002

Signed by the governor April 1, 2002, 9:09 a.m.

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#### CHAPTER 312—S.F.No. 2675

*An act relating to the environment; requiring state agencies to use clean fuels; modifying the application of recyclable material container requirements for public entities; amending Minnesota Statutes 2000, section 115A.151; proposing coding for new law in Minnesota Statutes, chapter 16C.*

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

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