

Sec. 19. **APPROPRIATIONS.**

(a) Any money received by the commissioner of health from nonstate sources to operate the adverse health care events reporting system in fiscal year 2005 is appropriated to the commissioner of health for that purpose.

(b) The annual licensing fee collected under Minnesota Statutes, section 144.55, subdivision 1a, is appropriated from the state government special revenue fund to the commissioner of health for the purposes of regulating outpatient surgical centers.

Presented to the governor May 13, 2004

Signed by the governor May 15, 2004, 10:40 p.m.

**CHAPTER 199—S.F.No. 1803**

*An act relating to business organizations; enacting and modifying the Uniform Limited Partnership Act of 2001; providing transitional provisions; making conforming changes; regulating the organization, structure, and governance of business corporations, nonprofit corporations, and limited liability companies; appropriating money; amending Minnesota Statutes 2002, sections 5.25, subdivision 1; 302A.011, subdivisions 21, 31, 49, 51, by adding subdivisions; 302A.111, subdivision 2; 302A.115, subdivision 1; 302A.137; 302A.215; 302A.231, subdivisions 4, 6; 302A.401, subdivision 3; 302A.402, subdivision 2; 302A.437, subdivision 1; 302A.441; 302A.471, subdivisions 1, 3; 302A.473, subdivisions 3, 4; 302A.521, subdivision 1; 302A.651, subdivision 1; 302A.661, subdivision 2; 302A.723, subdivision 1; 308A.121, subdivision 1; 317A.011, subdivision 14, by adding a subdivision; 317A.115, subdivision 2; 317A.231, subdivisions 4, 5; 317A.447; 322B.03, subdivisions 36a, 45a; 322B.115, subdivision 2; 322B.12, subdivision 1; 322B.155; 322B.346, subdivision 1; 322B.35, subdivision 1; 322B.383, subdivision 1; 322B.386, subdivisions 3, 4; 322B.40, subdivision 6; 322B.63; 322B.643, subdivisions 4, 6; 322B.77, subdivision 2; 323A.1-01; Minnesota Statutes 2003 Supplement, section 317A.443, subdivision 2; proposing coding for new law in Minnesota Statutes, chapters 302A; 322B; proposing coding for new law as Minnesota Statutes, chapter 321; repealing Minnesota Statutes 2002, sections 322A.01; 322A.02; 322A.03; 322A.04; 322A.05; 322A.06; 322A.07; 322A.11; 322A.12; 322A.13; 322A.14; 322A.15; 322A.16; 322A.17; 322A.18; 322A.19; 322A.24; 322A.25; 322A.26; 322A.27; 322A.28; 322A.31; 322A.32; 322A.33; 322A.34; 322A.35; 322A.38; 322A.39; 322A.40; 322A.41; 322A.45; 322A.46; 322A.47; 322A.48; 322A.49; 322A.50; 322A.51; 322A.52; 322A.55; 322A.56; 322A.57; 322A.58; 322A.59; 322A.63; 322A.64; 322A.65; 322A.66; 322A.69; 322A.70; 322A.71; 322A.72; 322A.73; 322A.74; 322A.75; 322A.76; 322A.761; 322A.79; 322A.80; 322A.81; 322A.82; 322A.85; 322A.86; 322A.87; 322A.88.*

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

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## ARTICLE 1

## GENERAL PROVISIONS

Section 1. [321.101] SHORT TITLE.

This chapter may be cited as the Uniform Limited Partnership Act 2001.

Sec. 2. [321.102] DEFINITIONS.

In this chapter:

(1) "Certificate of limited partnership" means the certificate required by section 321.201. The term includes the certificate as amended or restated.

(2) "Contribution," except in the phrase "right of contribution," means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(A) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

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

(4) "Designated office" means:

(A) with respect to a limited partnership, the office that the limited partnership is required to designate and maintain under section 321.114; and

(B) with respect to a foreign limited partnership, its principal office.

(5) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to section 321.404(c).

(7) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability limited partnership.

(8) "General partner" means:

(A) with respect to a limited partnership, a person that:

(i) becomes a general partner under section 321.401 and has not become dissociated as a general partner under section 321.603; or

(ii) was a general partner in a limited partnership when the limited partnership became subject to this chapter under section 321.1206(b), (c), or (f) and has not

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become dissociated as a general partner under section 321.603; and

(B) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

(9) "Limited liability limited partnership," except in the phrases "foreign limited liability limited partnership" and "limited partnership that is a limited liability limited partnership under section 322A.88," means:

(A) a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership; or

(B) a limited partnership that:

(i) became subject to this chapter under section 321.1206(b), (c), or (f);

(ii) immediately before becoming subject to this chapter was a limited liability limited partnership under section 322A.88; and

(iii) since becoming subject to this chapter has not amended its certificate of limited partnership to state that it is not a limited liability limited partnership.

(10) "Limited partner" means:

(A) with respect to a limited partnership, a person that:

(i) becomes a limited partner under section 321.301 and has not become dissociated as a limited partner under section 321.601; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 321.1206(b), (c), or (f) and has not become dissociated as a limited partner under section 321.601; and

(B) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(11) "Limited partnership," except in the phrases "foreign limited partnership," "foreign limited liability limited partnership," "limited partnership formed under chapter 322," "limited partnership formed under chapter 322A," and "limited partnership that is a limited liability limited partnership under chapter 322A," means an entity, having one or more general partners and one or more limited partners, which is formed under this chapter by two or more persons or becomes subject to this chapter under article 11 or section 321.1206(b), (c), or (f). The term includes a limited liability limited partnership.

(12) "Partner" means a limited partner or general partner.

(13) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; govern-

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mental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(15) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(16) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(17) "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.

(18) "Required information" means the information that a limited partnership is required to maintain under section 321.111.

(19) "Sign" means:

(A) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(B) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(22) "Transferable interest" means a partner's right to receive distributions.

(23) "Transferee" means, except in section 321.409, a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

### Sec. 3. [321.103] KNOWLEDGE AND NOTICE.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) knows of it;

(2) has received a notification of it;

(3) has reason to know it exists from all of the facts known to the person at the time in question; or

(4) has notice of it under subsection (c) or (d).

(c) A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsections (d) and (i), the certificate is not notice of any other fact.

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(d) Subject to subsection (i), a person has notice of:

(1) another person's dissociation as a general partner, 90 days after the effective date of a filed amendment to the certificate of limited partnership which states that the other person has dissociated or 90 days after the effective date of a filed statement of dissociation pertaining to the other person, whichever occurs first;

(2) a limited partnership's dissolution, 90 days after the effective date of a filed amendment to the certificate of limited partnership stating that the limited partnership is dissolved;

(3) a limited partnership's termination, 90 days after the effective date of a filed statement of termination;

(4) a limited partnership's conversion under article 11, 90 days after the effective date of the filed articles of conversion; or

(5) a merger under article 11, 90 days after the effective date of the filed articles of merger.

(e) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(f) A person receives a notification when the notification:

(1) comes to the person's attention; or

(2) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(g) Except as otherwise provided in subsection (h), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(h) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

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(i) Notice otherwise effective under subsection (d) does not affect the power of a person to transfer real property held in the name of a limited partnership unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the Office of the County Recorder in the county in which the real property affected by the statement, amendment, or articles is located or, if the real property is registered under chapter 508 or 508A, memorialized on the certificate of title for that property.

**Sec. 4. [321.104] NATURE, PURPOSE, AND DURATION OF ENTITY.**

(a) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(b) A limited partnership may be organized under this chapter for any lawful purpose.

(c) A limited partnership has a perpetual duration.

**Sec. 5. [321.105] POWERS.**

A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

**Sec. 6. [321.106] GOVERNING LAW.**

The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

**Sec. 7. [321.107] SUPPLEMENTAL PRINCIPLES OF LAW; RATE OF INTEREST.**

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section 334.01.

**Sec. 8. [321.108] NAME.**

(a) The name of a limited partnership may contain the name of any partner.

(b) The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and may not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

(c) Except as provided in section 321.1206(d)(1), the name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or

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the abbreviation "LLLP" or "L.L.L.P." and must not otherwise contain the abbreviation "L.P." or "LP."

(d) The limited partnership name shall not contain a word or phrase that indicates or implies that it is formed for a purpose other than a legal purpose.

(e) The limited partnership name shall be distinguishable upon the records in the Office of the Secretary of State from the name of each domestic corporation, limited partnership, limited liability partnership, and limited liability company, whether profit or nonprofit, and each foreign corporation, limited partnership, limited liability partnership, and limited liability company authorized or registered to do business in this state, whether profit or nonprofit, and each name the right to which is, at the time of formation, reserved as provided for in sections 302A.117, 322A.03, 322B.125, or 333.001 to 333.54, unless there is filed with the certificate of limited partnership one of the following:

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

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

(3) the applicant's affidavit that the corporation, limited partnership, or limited liability company with the name that is not distinguishable has been incorporated or on file in this state for at least three years prior to the affidavit, if it is a domestic corporation, limited partnership, or limited liability company, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign corporation, limited partnership, or limited liability company, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit; that the corporation, limited partnership, or limited liability company or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the corporation, limited partnership, or limited liability company or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the corporation or limited liability company or in care of the agent of the limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, stating that the applicant intends to use a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee corporation, limited partnership, limited liability company, or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the corporation, limited partnership, or limited

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liability company with the name that is not distinguishable in the county in which is located the registered office of the corporation, limited partnership, or limited liability company shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the corporation, limited partnership, limited liability company, or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

(f) The secretary of state shall determine whether a name is distinguishable from another name for purposes of this section and section 321.109.

(g) This section and section 321.109 do not abrogate or limit the law of unfair competition or unfair practices; nor sections 333.001 to 333.54; nor the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols; nor derogate the common law or the principles of equity.

(h) A limited partnership that is the surviving organization in a merger with one or more other organizations, or that is formed by the reorganization of one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may have the same name as that used in this state by any of the other organizations, if the other organization whose name is sought to be used was organized under the laws of, or is authorized to transact business in, this state.

(i) The use of a name by a limited partnership in violation of this section does not affect or vitiate its existence, but a court in this state may, upon application of the state or of a person interested or affected, enjoin the limited partnership from doing business under a name assumed in violation of this section, although its certificate of limited partnership may have been filed with the secretary of state and a certificate of formation issued.

(j) A person doing business in this state may contest the subsequent registration of a name with the Office of the Secretary of State as provided in section 5.22.

#### **Sec. 9. [321.109] RESERVATION OF NAME.**

(a) The exclusive right to the use of a limited partnership name otherwise permitted by section 321.108 may be reserved by:

- (1) a person doing business in this state under that name;
- (2) a person intending to form a limited partnership under this chapter;
- (3) a limited partnership intending to change its name;
- (4) a foreign limited partnership intending to make application for a certificate of authority to transact business in this state;

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(5) a foreign limited partnership authorized to transact business in this state and intending to change its name;

(6) a person intending to form a limited partnership in another state and intending to have the foreign limited partnership make application for a certificate of authority to transact business in this state;

(7) a foreign limited partnership formed under a name that does not comply with section 321.108(b) or (c), but the name reserved under this paragraph may differ from the foreign limited partnership's name only to the extent necessary to comply with section 321.108(b) and (c); or

(8) a foreign limited partnership doing business under that name or a name not distinguishable from that name in one or more states other than this state and not described in clause (4), (5), (6), or (7).

(b) The reservation shall be made by delivering for filing with the secretary of state a request that the name be reserved. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods.

(c) The right to the exclusive use of a limited partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by delivering for filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee.

**Sec. 10. [321.110] EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE PROVISIONS.**

(a) Except as otherwise provided in subsection (b), the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) A partnership agreement may not:

(1) vary a limited partnership's power under section 321.105 to sue, be sued, and defend in its own name;

(2) vary the law applicable to a limited partnership under section 321.106;

(3) vary the requirements of section 321.204;

(4) vary the information required under section 321.111 or unreasonably restrict the right to information under section 321.304 or 321.407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(5) eliminate the duty of loyalty under section 321.408, but the partnership agreement may:

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(A) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(B) specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(6) unreasonably reduce the duty of care under section 321.408(c);

(7) eliminate the obligation of good faith and fair dealing under sections 321.305(b) and 321.408(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(8) vary the power of a person to dissociate as a general partner under section 321.604(a) except to require that the notice under section 321.603(1) be in a record;

(9) vary the power of a court to decree dissolution in the circumstances specified in section 321.802;

(10) vary the requirement to wind up the partnership's business as specified in section 321.803;

(11) unreasonably restrict the right to maintain an action under article 10;

(12) restrict the right of a partner under section 321.1110(a) to approve a conversion or merger or the right of a general partner under section 321.1110(b) to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership; or

(13) restrict rights under this chapter of a person other than a partner or a transferee.

#### Sec. 11. **[321.111] REQUIRED INFORMATION.**

A limited partnership shall maintain at its designated office the following information:

(1) a current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) a copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) a copy of any filed articles of conversion or merger;

(4) a copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(5) a copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

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(6) a copy of any financial statement of the limited partnership for the three most recent years;

(7) a copy of the three most recent annual reports delivered by the limited partnership to the secretary of state pursuant to section 321.210;

(8) a copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(9) unless contained in a partnership agreement made in a record, a record stating:

(A) the amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;

(B) the times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(C) for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(D) any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

**Sec. 12. [321.112] BUSINESS TRANSACTIONS OF PARTNER WITH PARTNERSHIP.**

A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

**Sec. 13. [321.113] DUAL CAPACITY.**

A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties and restrictions under this chapter and the partnership agreement for limited partners.

**Sec. 14. [321.114] OFFICE AND AGENT FOR SERVICE OF PROCESS.**

(a) A limited partnership shall designate and continuously maintain in this state:

(1) an office, which need not be a place of its activity in this state; and

(2) an agent for service of process.

(b) A foreign limited partnership shall designate and continuously maintain in this state an agent for service of process.

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

**Sec. 15. [321.115] CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS.**

(a) In order to change its designated office, agent for service of process, or the address of its agent for service of process, a limited partnership or a foreign limited partnership may deliver to the secretary of state for filing a statement of change containing:

- (1) the name of the limited partnership or foreign limited partnership;
- (2) if the current designated office is to be changed, the street and mailing address of the new designated office; and
- (3) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to section 321.206(c), a statement of change is effective when filed by the secretary of state.

**Sec. 16. [321.116] RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

Subdivision 1. RESIGNATION OF AGENT. An agent of a limited partnership or a foreign limited partnership may resign by delivering for filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the limited partnership at its principal office or to a legal representative of the limited partnership. The appointment of the agent terminates 30 days after the notice is filed by the secretary of state.

Subd. 2. CHANGE OF BUSINESS ADDRESS OR NAME OF AGENT. If the business address or name of an agent changes, the agent shall change the address of the designated office or the name of the agent, as the case may be, of each limited partnership or foreign limited partnership represented by that agent by delivering for filing with the secretary of state a change of designated office statement signed by the agent, stating that a copy of the statement has been mailed to each of those limited partnerships or foreign limited partnerships or to the legal representative of each of those limited partnerships or foreign limited partnerships.

**Sec. 17. [321.117] SERVICE OF PROCESS.**

A process, notice, or demand required or permitted by law to be served may be served as provided in section 5.25.

**Sec. 18. [321.118] CONSENT AND PROXIES OF PARTNERS.**

Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

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## ARTICLE 2

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP  
AND OTHER FILINGSSec. 19. [321.201] FORMATION OF LIMITED PARTNERSHIP; CERTIFICATE OF LIMITED PARTNERSHIP.

(a) In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the secretary of state for filing. The certificate must state:

- (1) the name of the limited partnership, which must comply with section 321.108;
- (2) the street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process;
- (3) the name and the street and mailing address of each general partner;
- (4) whether the limited partnership is a limited liability limited partnership; and
- (5) any additional information required by article 11.

(b) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in section 321.110(b) in a manner inconsistent with that section.

(c) If there has been substantial compliance with subsection (a), subject to section 321.206(c) a limited partnership is formed when the secretary of state files the certificate of limited partnership.

(d) Subject to subsection (b), if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

- (1) the partnership agreement prevails as to partners and transferees; and
- (2) the filed certificate of limited partnership, statement of dissociation, termination, or change or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

Sec. 20. [321.202] AMENDMENT OR RESTATEMENT OF CERTIFICATE.

(a) In order to amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment or, pursuant to article 11, articles of merger stating:

- (1) the name of the limited partnership;
- (2) the date of filing of its initial certificate; and
- (3) the changes the amendment makes to the certificate as most recently amended or restated.

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(b) A limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:

(1) the admission of a new general partner;

(2) the dissociation of a person as a general partner; or

(3) the appointment of a person to wind up the limited partnership's activities under section 321.803(c) or (d).

(c) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the secretary of state for filing a statement of change pursuant to section 321.115 or a statement of correction pursuant to section 321.207.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

(e) A restated certificate of limited partnership may be delivered to the secretary of state for filing in the same manner as an amendment.

(f) Subject to section 321.206(c), an amendment or restated certificate is effective when filed by the secretary of state.

#### Sec. 21. [321.203] STATEMENT OF TERMINATION.

A dissolved limited partnership that has completed winding up may deliver to the secretary of state for filing a statement of termination that states:

(1) the name of the limited partnership;

(2) the date of filing of its initial certificate of limited partnership; and

(3) any other information as determined by the general partners filing the statement or by a person appointed pursuant to section 321.803(c) or (d).

#### Sec. 22. [321.204] SIGNING OF RECORDS.

(a) Each record delivered to the secretary of state for filing pursuant to this chapter must be signed in the following manner:

(1) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(2) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

(3) An amendment designating as general partner a person admitted under section 321.801(3)(B) following the dissociation of a limited partnership's last general partner must be signed by that person.

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(4) An amendment required by section 321.803(c) following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

(5) Any other amendment must be signed by:

(A) at least one general partner listed in the certificate;

(B) each other person designated in the amendment as a new general partner; and

(C) each person that the amendment indicates has dissociated as a general partner, unless:

(i) the person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(ii) the person has previously delivered to the secretary of state for filing a statement of dissociation.

(6) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate must be signed in a manner that satisfies that paragraph.

(7) A statement of termination must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to section 321.803(c) or (d) to wind up the dissolved limited partnership's activities.

(8) Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.

(9) Articles of merger must be signed as provided in section 321.1108(a).

(10) Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate.

(11) A statement by a person pursuant to section 321.605(a)(4) stating that the person has dissociated as a general partner must be signed by that person.

(12) A statement of withdrawal by a person pursuant to section 321.306 must be signed by that person.

(13) A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.

(14) Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.

(b) Any person may sign by an attorney in fact any record to be filed pursuant to this chapter.

**Sec. 23. [321.205] SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

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

(a) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing does not do so, any other person that is aggrieved may petition the district court to order:

- (1) the person to sign the record;
- (2) deliver the record to the secretary of state for filing; or
- (3) the secretary of state to file the record unsigned.

(b) If the person aggrieved under subsection (a) is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (a) may seek the remedies provided in subsection (a) in the same action in combination or in the alternative.

(c) A record filed unsigned pursuant to this section is effective without being signed.

**Sec. 24. [321.206] DELIVERY TO AND FILING OF RECORDS BY SECRETARY OF STATE; EFFECTIVE TIME AND DATE.**

(a) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. Unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, and if the appropriate filing fees have been paid, the secretary of state shall file the record and:

(1) for a statement of dissociation, send:

(A) a copy of the filed statement to the person which the statement indicates has dissociated as a general partner; and

(B) a copy of the filed statement to the limited partnership;

(2) for a statement of withdrawal, send:

(A) a copy of the filed statement to the person on whose behalf the record was filed; and

(B) if the statement refers to an existing limited partnership, a copy of the filed statement to the limited partnership; and

(3) for all other records, send a copy of the filed record to the person on whose behalf the record was filed.

(b) Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

(c) Except as otherwise provided in sections 321.116 and 321.207, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

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



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

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

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

(A) the specified date; or

(B) the 30th day after the record is filed; or

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

(A) the specified date; or

(B) the 30th day after the record is filed.

(d) The appropriate fees for filings under this chapter are:

(1) for filing a certificate of limited partnership, \$100;

(2) for filing an amended certificate of limited partnership, \$50;

(3) for filing any other record required or permitted to be delivered for filing, \$35;

(4) for filing a certificate requesting authority to transact business in Minnesota as a foreign limited partnership, \$85;

(5) for filing an application of reinstatement, \$25; and

(6) for filing any other record required or permitted to be delivered for filing on a foreign limited partnership authorized to transact business in Minnesota, \$50.

#### **Sec. 25. [321.207] CORRECTING FILED RECORD.**

A limited partnership or foreign limited partnership may deliver to the secretary of state for filing articles of correction pursuant to section 5.16, except that for the purposes of section 321.103(c) and (d) the articles are effective only as of the date they are filed.

#### **Sec. 26. [321.208] LIABILITY FOR FALSE INFORMATION IN FILED RECORD.**

(a) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from:

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

(2) a general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner

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has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section 321.202, file a petition pursuant to section 321.205, or deliver to the secretary of state for filing a statement of change pursuant to section 321.115 or a statement of correction pursuant to section 321.207.

(b) A person signing a record pursuant to this chapter is subject to section 5.15.

**Sec. 27. [321.210] ANNUAL REPORT FOR SECRETARY OF STATE.**

(a) Subject to subsection (b):

(1) in each calendar year following the calendar year in which a limited partnership becomes subject to this chapter, the limited partnership must deliver to the secretary of state for filing an annual registration containing the information required by subsection (d); and

(2) in each calendar year following the calendar year in which there is first on file with the secretary of state a certificate of authority under section 321.904 pertaining to a foreign limited partnership, the foreign limited partnership must deliver to the secretary of state for filing an annual registration containing the information required by subsection (d).

(b) A limited partnership's obligation under subsection (a) ends if the limited partnership delivers to the secretary of state for filing a statement of termination under section 321.203 and the statement becomes effective under section 321.206. A foreign limited partnership's obligation under subsection (a) ends if the secretary of state issues and files a certificate of revocation under section 321.906 or if the foreign limited partnership delivers to the secretary of state for filing a notice of cancellation under section 321.907(a) and that notice takes effect under section 321.206. If a foreign limited partnership's obligations under subsection (a) end and later the secretary of state files, pursuant to section 321.904, a new certificate of authority pertaining to that foreign limited partnership, subsection (a)(2), again applies to the foreign limited partnership and, for the purposes of subsection (a)(2), the calendar year of the new filing is treated as the calendar year in which a certificate of authority is first on file with the secretary of state.

(c) The annual registration must contain:

(1) the name of the limited partnership or foreign limited partnership;

(2) the address of its designated office and the name and street and mailing address of its agent for service of process in Minnesota;

(3) in the case of a limited partnership, the street and mailing address of its principal office; and

(4) in the case of a foreign limited partnership, the name of the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under section 321.905(a).

(d) The secretary of state shall:

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

(1) administratively dissolve under section 321.809 a limited partnership that has failed to file a registration pursuant to subsection (a); and

(2) revoke under section 321.906 the certificate of authority of a foreign limited partnership that has failed to file a registration pursuant to subsection (a).

### ARTICLE 3

#### LIMITED PARTNERS

##### Sec. 28. [321.301] BECOMING LIMITED PARTNER.

A person becomes a limited partner:

(1) as provided in the partnership agreement;

(2) as the result of a conversion or merger under article 11; or

(3) with the consent of all the partners.

##### Sec. 29. [321.302] NO RIGHT OR POWER AS LIMITED PARTNER TO BIND LIMITED PARTNERSHIP.

A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

##### Sec. 30. [321.303] NO LIABILITY AS LIMITED PARTNER FOR LIMITED PARTNERSHIP OBLIGATIONS.

An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

##### Sec. 31. [321.304] RIGHT OF LIMITED PARTNER AND FORMER LIMITED PARTNER TO INFORMATION.

(a) On ten days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office. The limited partner need not have any particular purpose for seeking the information.

(b) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:

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

(1) the limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(2) the limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(3) the information sought is directly connected to the limited partner's purpose.

(c) Within ten days after receiving a demand pursuant to subsection (b), the limited partnership in a record shall inform the limited partner that made the demand:

(1) what information the limited partnership will provide in response to the demand;

(2) when and where the limited partnership will provide the information; and

(3) if the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(d) Subject to subsection (f), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office if:

(1) the information pertains to the period during which the person was a limited partner;

(2) the person seeks the information in good faith; and

(3) the person meets the requirements of subsection (b).

(e) The limited partnership shall respond to a demand made pursuant to subsection (d) in the same manner as provided in subsection (c).

(f) If a limited partner dies, section 321.704 applies.

(g) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(h) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(i) Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

(j) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (g) or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

New language is indicated by underline, deletions by strikeout.

(k) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

**Sec. 32. [321.305] LIMITED DUTIES OF LIMITED PARTNERS.**

(a) A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(b) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(c) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

**Sec. 33. [321.306] PERSON ERRONEOUSLY BELIEVING SELF TO BE LIMITED PARTNER.**

(a) Except as otherwise provided in subsection (b), a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(1) causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing; or

(2) withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of withdrawal under this section.

(b) A person that makes an investment described in subsection (a) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(c) If a person makes a diligent effort in good faith to comply with subsection (a)(1) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subsection (a)(2) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

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

**ARTICLE 4**  
**GENERAL PARTNERS**

**Sec. 34. [321.401] BECOMING GENERAL PARTNER.**

A person becomes a general partner:

- (1) as provided in the partnership agreement;
- (2) under section 321.801(3)(B) following the dissociation of a limited partnership's last general partner;
- (3) as the result of a conversion or merger under article 11; or
- (4) with the consent of all the partners.

**Sec. 35. [321.402] GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP.**

(a) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under section 321.103(d) that the general partner lacked authority.

(b) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

**Sec. 36. [321.403] LIMITED PARTNERSHIP LIABLE FOR GENERAL PARTNER'S ACTIONABLE CONDUCT.**

(a) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(b) If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

**Sec. 37. [321.404] GENERAL PARTNER'S LIABILITY.**

(a) Except as otherwise provided in subsections (b) and (c), all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

(b) A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

(c) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise,

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

is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under section 321.406(b)(2).

**Sec. 38. [321.405] ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.**

(a) To the extent not inconsistent with section 321.404, a general partner may be joined in an action against the limited partnership or named in a separate action.

(b) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(c) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under section 321.404 and:

(1) a judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) the limited partnership is a debtor in bankruptcy;

(3) the general partner has agreed that the creditor need not exhaust limited partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

**Sec. 39. [321.406] MANAGEMENT RIGHTS OF GENERAL PARTNER.**

(a) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(b) The consent of each partner is necessary to:

(1) amend the partnership agreement;

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

(2) amend the certificate of limited partnership to add or, subject to section 321.1110, delete a statement that the limited partnership is a limited liability limited partnership; and

(3) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(c) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(d) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(e) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection (c) or (d) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(f) A general partner is not entitled to remuneration for services performed for the partnership.

**Sec. 40. [321.407] RIGHT OF GENERAL PARTNER AND FORMER GENERAL PARTNER TO INFORMATION.**

(a) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

(1) in the limited partnership's designated office, required information; and

(2) at a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(b) Each general partner and the limited partnership shall furnish to a general partner:

(1) without demand, any information concerning the limited partnership's activities and financial condition reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and

(2) on demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) Subject to subsection (e), on ten days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (a) at the location specified in subsection (a) if:

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



(1) the information or record pertains to the period during which the person was a general partner;

(2) the person seeks the information or record in good faith; and

(3) the person satisfies the requirements imposed on a limited partner by section 321.304(b).

(d) The limited partnership shall respond to a demand made pursuant to subsection (c) in the same manner as provided in section 321.304(c).

(e) If a general partner dies, section 321.704 applies.

(f) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(g) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (f) or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(i) The rights under this section do not extend to a person as transferee, but the rights under subsection (c) of a person dissociated as a general may be exercised by the legal representative of an individual who dissociated as a general partner under section 321.603(7)(B) or (C).

#### **Sec. 41. [321.408] GENERAL STANDARDS OF GENERAL PARTNER'S CONDUCT.**

(a) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections (b) and (c).

(b) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:

(1) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(2) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and

(3) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

New language is indicated by underline, deletions by strikeout.

(c) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

#### Sec. 42. [321.409] TRANSFER OF PARTNERSHIP PROPERTY.

(a) Subject to the effect of a notification effective under section 321.103(d) and (i), property held in the name of a limited partnership may be transferred by an instrument of transfer executed by a general partner in the limited partnership name.

(b) Where a transfer has been made to an initial transferee through an instrument of transfer effective under subsection (a), a limited partnership may recover the transferred limited partnership property from a transferee only if:

(1) the limited partnership proves that execution of the instrument of initial transfer did not bind the partnership under section 321.402; and

(2) as to a subsequent transferee who gave value for the property, the limited partnership proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b), from any earlier transferee of the property.

(d) This section does not affect the power of a person dissociated as a general partner to bind a limited partnership under sections 321.606(a) and 321.804(b).

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## ARTICLE 5

### CONTRIBUTIONS AND DISTRIBUTIONS

#### Sec. 43. [321.501] FORM OF CONTRIBUTION.

A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

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

**Sec. 44. [321.502] LIABILITY FOR CONTRIBUTION.**

(a) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

(b) If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.

(c) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subsection (a), without notice of any compromise under this subsection, may enforce the original obligation.

**Sec. 45. [321.503] SHARING OF DISTRIBUTIONS.**

A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

**Sec. 46. [321.504] INTERIM DISTRIBUTIONS.**

A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

**Sec. 47. [321.505] NO DISTRIBUTION ON ACCOUNT OF DISSOCIATION.**

A person does not have a right to receive a distribution on account of dissociation.

**Sec. 48. [321.506] DISTRIBUTION IN KIND.**

A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to section 321.812(b), a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

**Sec. 49. [321.507] RIGHT TO DISTRIBUTION.**

When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

**Sec. 50. [321.508] LIMITATIONS ON DISTRIBUTION.**

(a) A limited partnership may not make a distribution in violation of the partnership agreement.

New language is indicated by underline, deletions by strikeout.

(b) A limited partnership may not make a distribution if after the distribution:

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

(2) the limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

(c) A limited partnership may base a determination that a distribution is not prohibited under subsection (b) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(d) Except as otherwise provided in subsection (g), the effect of a distribution under subsection (b) is measured:

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

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

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

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

(e) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(f) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (b) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(g) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

#### **Sec. 51. [321.509] LIABILITY FOR IMPROPER DISTRIBUTIONS.**

(a) A general partner that consents to a distribution made in violation of section 321.508 is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section 321.408.

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(b) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section 321.508 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section 321.508.

(c) A general partner against which an action is commenced under subsection (a) may:

(1) implead in the action any other person that is liable under subsection (a) and compel contribution from the person; and

(2) implead in the action any person that received a distribution in violation of subsection (b) and compel contribution from the person in the amount the person received in violation of subsection (b).

(d) An action under this section is barred if it is not commenced within two years after the distribution.

## ARTICLE 6

### DISSOCIATION

#### Sec. 52. [321.601] DISSOCIATION AS LIMITED PARTNER.

(a) A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(b) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(1) the limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(2) an event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(3) the person's expulsion as a limited partner pursuant to the partnership agreement;

(4) the person's expulsion as a limited partner by the unanimous consent of the other partners if:

(A) it is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(B) there has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(C) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a

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certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(A) the person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(B) the person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section 321.305(b); or

(C) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;

(6) in the case of a person who is an individual, the person's death;

(7) in the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(8) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(9) termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(10) the limited partnership's participation in a conversion or merger under article 11, if the limited partnership:

(A) is not the converted or surviving entity; or

(B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

**Sec. 53. [321.602] EFFECT OF DISSOCIATION AS LIMITED PARTNER.**

(a) Upon a person's dissociation as a limited partner:

(1) subject to section 321.704, the person does not have further rights as a limited partner;

(2) the person's obligation of good faith and fair dealing as a limited partner under section 321.305(b) continues only as to matters arising and events occurring before the dissociation; and

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(3) subject to section 321.704 and article 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

(b) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.

**Sec. 54. [321.603] DISSOCIATION AS GENERAL PARTNER.**

A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

(1) the limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(2) an event agreed to in the partnership agreement as causing the person's dissociation as a general partner;

(3) the person's expulsion as a general partner pursuant to the partnership agreement;

(4) the person's expulsion as a general partner by the unanimous consent of the other partners if:

(A) it is unlawful to carry on the limited partnership's activities with the person as a general partner;

(B) there has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(C) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

(A) the person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(B) the person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 321.408; or

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(C) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) the person's:

(A) becoming a debtor in bankruptcy;

(B) execution of an assignment for the benefit of creditors;

(C) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(D) failure, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a person who is an individual:

(A) the person's death;

(B) the appointment of a guardian or general conservator for the person; or

(C) a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(8) in the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(10) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

(11) the limited partnership's participation in a conversion or merger under article 11, if the limited partnership:

(A) is not the converted or surviving entity; or

(B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

**Sec. 55. [321.604] PERSON'S POWER TO DISSOCIATE AS GENERAL PARTNER; WRONGFUL DISSOCIATION.**

(a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section 321.603(1).

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(b) A person's dissociation as a general partner is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement; or

(2) it occurs before the termination of the limited partnership, and:

(A) the person withdraws as a general partner by express will;

(B) the person is expelled as a general partner by judicial determination under section 321.603(5);

(C) the person is dissociated as a general partner by becoming a debtor in bankruptcy; or

(D) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 321.1001, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

**Sec. 56. [321.605] EFFECT OF DISSOCIATION AS GENERAL PARTNER.**

(a) Upon a person's dissociation as a general partner:

(1) the person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;

(2) the person's duty of loyalty as a general partner under section 321.408(b)(3) terminates;

(3) the person's duty of loyalty as a general partner under section 321.408(b)(1) and (2) and duty of care under section 321.408(c) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(4) the person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and

(5) subject to section 321.704 and article 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(b) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.

**Sec. 57. [321.606] POWER TO BIND AND LIABILITY TO LIMITED PARTNERSHIP BEFORE DISSOLUTION OF PARTNERSHIP OF PERSON DISSOCIATED AS GENERAL PARTNER.**

New language is indicated by underline, deletions by strikeout.

(a) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under article 11, or merged out of existence under article 11, the limited partnership is bound by an act of the person if:

(1) the act would have bound the limited partnership under section 321.402 before the dissociation; and

(2) at the time the other party enters into the transaction:

(A) less than two years has passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(b) If a limited partnership is bound under subsection (a), the person dissociated as a general partner which caused the limited partnership to be bound is liable:

(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (a); and

(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

**Sec. 58. [321.607] LIABILITY TO OTHER PERSONS OF PERSON DISSOCIATED AS GENERAL PARTNER.**

(a) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (b) and (c), the person is not liable for a limited partnership's obligation incurred after dissociation.

(b) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under section 321.404 on an obligation incurred by the limited partnership under section 321.804.

(c) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

(1) a general partner would be liable on the transaction; and

(2) at the time the other party enters into the transaction:

(A) less than two years has passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(d) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

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(e) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

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## ARTICLE 7

### TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

#### Sec. 59. [321.701] PARTNER'S TRANSFERABLE INTEREST.

The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property.

#### Sec. 60. [321.702] TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.

(a) A transfer, in whole or in part, of a partner's transferable interest:

(1) is permissible;

(2) does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and

(3) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (c), or to inspect or copy the required information or the limited partnership's other records.

(b) A transferee has a right to receive, in accordance with the transfer:

(1) distributions to which the transferor would otherwise be entitled; and

(2) upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

(c) In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

(d) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(e) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(f) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under sections 321.502 and 321.509. However,

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the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner:

**Sec. 61. [321.703] RIGHTS OF CREDITOR OF PARTNER OR TRANSFEREE.**

(a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than limited partnership property, by one or more of the other partners; or

(3) with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(d) This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

**Sec. 62. [321.704] POWER OF ESTATE OF DECEASED PARTNER.**

If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section 321.702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 321.304.

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## ARTICLE 8

### DISSOLUTION

**Sec. 63. [321.801] NONJUDICIAL DISSOLUTION.**

Except as otherwise provided in section 321.802, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

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(1) the happening of an event specified in the partnership agreement;

(2) the consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;

(3) after the dissociation of a person as a general partner:

(A) if the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

(B) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:

(i) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) at least one person is admitted as a general partner in accordance with the consent;

(4) the passage of 90 days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or

(5) the signing and filing of a declaration of dissolution by the secretary of state under section 321.809(c).

#### Sec. 64. [321.802] JUDICIAL DISSOLUTION.

On application by a partner the district court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

#### Sec. 65. [321.803] WINDING UP.

(a) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(b) In winding up its activities, the limited partnership:

(1) may amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section 321.203, and perform other necessary acts; and

(2) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

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(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a general partner under section 321.804; and

(2) shall promptly amend the certificate of limited partnership to state:

(A) that the limited partnership does not have a general partner;

(B) the name of the person that has been appointed to wind up the limited partnership; and

(C) the street and mailing address of the person.

(d) On the application of any partner, the district court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

(1) a limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (c);  
or

(2) the applicant establishes other good cause.

**Sec. 66. [321.804] POWER OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO BIND PARTNERSHIP AFTER DISSOLUTION.**

(a) A limited partnership is bound by a general partner's act after dissolution which:

(1) is appropriate for winding up the limited partnership's activities; or

(2) would have bound the limited partnership under section 321.402 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(1) at the time the other party enters into the transaction:

(A) less than two years has passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(2) the act:

(A) is appropriate for winding up the limited partnership's activities; or

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(B) would have bound the limited partnership under section 321.402 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

**Sec. 67. [321.805] LIABILITY AFTER DISSOLUTION OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO LIMITED PARTNERSHIP, OTHER GENERAL PARTNERS, AND PERSONS DISSOCIATED AS GENERAL PARTNER.**

(a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 321.804(a) by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under section 321.804(b), the person is liable:

(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

**Sec. 68. [321.806] KNOWN CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP.**

(a) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (b).

(b) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

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

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

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

(4) state that the claim will be barred if not received by the deadline; and

(5) unless the limited partnership has been at each moment during its existence either a limited liability limited partnership or a limited partnership that is a limited liability limited partnership under chapter 322A, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any

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general partner or person dissociated as a general partner which is based on section 321.404.

(c) A claim against a dissolved limited partnership is barred if the requirements of subsection (b) are met and:

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

(2) in the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within 90 days after the receipt of the notice of the rejection.

(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

**Sec. 69. [321.807] OTHER CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIPS.**

(a) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(b) The notice must:

(1) be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in the county in which the limited partnership's designated office is or was last located;

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

(3) state that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within five years after publication of the notice; and

(4) unless the limited partnership has been at each moment during its existence either a limited liability limited partnership or a limited liability limited partnership under chapter 322A, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 321.404.

(c) If a dissolved limited partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five years after the publication date of the notice:

(1) a claimant that did not receive notice in a record under section 321.806;

(2) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

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

(d) A claim not barred under this section may be enforced:

(1) against the dissolved limited partnership, to the extent of its undistributed assets;

(2) if the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(3) against any person liable on the claim under section 321.404.

**Sec. 70. [321.808] LIABILITY OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER WHEN CLAIM AGAINST LIMITED PARTNERSHIP BARRED.**

If a claim against a dissolved limited partnership is barred under section 321.806 or 321.807, any corresponding claim under section 321.404 is also barred.

**Sec. 71. [321.809] ADMINISTRATIVE DISSOLUTION.**

(a) A limited partnership that has failed to deliver for filing a registration pursuant to the requirements of section 321.210 must be dissolved by the secretary of state as described in this section.

(b) If the limited partnership has not filed the delinquent registration, the secretary of state must issue a certificate of administrative dissolution and the certificate must be filed in the Office of the Secretary of State. The secretary of state must annually inform the attorney general and the commissioner of revenue of the methods by which the names of limited partnerships administratively dissolved under this section during the preceding year may be determined. The secretary of state must also make available in an electronic format the names of the administratively dissolved limited partnerships.

(c) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 321.803 and 321.812 and to notify claimants under sections 321.806 and 321.807.

(d) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.

**Sec. 72. [321.810] REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.**

(a) A limited partnership that has been administratively dissolved may apply to the secretary of state for reinstatement after the effective date of dissolution. The application must be delivered to the secretary of state for filing and state:

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(1) the name of the limited partnership and the effective date of its administrative dissolution;

(2) that the grounds for dissolution either did not exist or have been eliminated;  
and

(3) that the limited partnership's name satisfies the requirements of section 321.108.

The application must also include any documents that were required to be delivered for filing to the secretary of state but which were not so delivered.

(b) If the secretary of state determines that an application contains the information required by subsection (a) and that the information is correct and the application includes the appropriate fee, the secretary of state shall file the reinstatement application and serve the limited partnership with a copy.

(c) When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred, except that for the purposes of section 321.103(c) and (d) the reinstatement is effective only as of the date the reinstatement is filed.

#### **Sec. 73. [321.812] DISPOSITION OF ASSETS; WHEN CONTRIBUTIONS REQUIRED.**

(a) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(b) Any surplus remaining after the limited partnership complies with subsection (a) must be paid in cash as a distribution.

(c) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the limited partnership was neither a limited liability limited partnership nor a limited partnership that is a limited liability limited partnership under chapter 322A, the following rules apply:

(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 321.607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution

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due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(3) If a person does not make the additional contribution required by paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph.

(d) A person that makes an additional contribution under subsection (c)(2) or (3) may recover from any person whose failure to contribute under subsection (c)(1) or (2) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(e) The estate of a deceased individual is liable for the person's obligations under this section.

(f) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection (c).

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## ARTICLE 9

### FOREIGN LIMITED PARTNERSHIPS

#### Sec. 74. [321.901] GOVERNING LAW.

(a) The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(b) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.

(c) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state.

#### Sec. 75. [321.902] APPLICATION FOR CERTIFICATE OF AUTHORITY.

(a) A foreign limited partnership may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

(1) the name of the foreign limited partnership and, if the name does not comply with section 321.108, an alternate name adopted pursuant to section 321.905(a);

New language is indicated by underline, deletions by strikeout.

(2) the name of the state or other jurisdiction under whose law the foreign limited partnership is organized;

(3) the street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office;

(4) the name and street and mailing address of the foreign limited partnership's initial agent for service of process in this state;

(5) the name and street and mailing address of each of the foreign limited partnership's general partners; and

(6) whether the foreign limited partnership is a foreign limited liability limited partnership.

(b) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized.

**Sec. 76. [321.903] ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.**

(a) Activities of a foreign limited partnership which do not constitute transacting business in this state within the meaning of this article include:

(1) maintaining, defending, and settling an action or proceeding;

(2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

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

(9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and

(10) transacting business in interstate commerce.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

**Sec. 77. [321.904] FILING OF CERTIFICATE OF AUTHORITY.**

Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application, prepare, sign and file a certificate of authority to transact business in this state, and send a copy of the filed certificate to the foreign limited partnership or its representative.

**Sec. 78. [321.905] NONCOMPLYING NAME OF FOREIGN LIMITED PARTNERSHIP.**

(a) A foreign limited partnership whose name does not comply with section 321.108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 321.108. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not comply with sections 333.01 to 333.06. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name unless the foreign limited partnership is authorized under sections 333.01 to 333.06 to transact business in this state under another name.

(b) If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with section 321.108, it may not thereafter transact business in this state until it complies with subsection (a) and obtains an amended certificate of authority.

**Sec. 79. [321.906] REVOCATION OF CERTIFICATE OF AUTHORITY.**

(a) A foreign limited partnership that has failed to deliver for filing a registration pursuant to the requirements of section 321.210 must have its certificate of authority to transact business in Minnesota revoked as described in this section.

(b) If the foreign limited partnership has not filed the delinquent registration, the secretary of state must issue a certificate of revocation and the certificate must be filed in the Office of the Secretary of State. The secretary of state must annually inform the attorney general and the commissioner of revenue of the methods by which the names of limited partnerships whose certificates of authority have been revoked under this section during the preceding year may be determined. The secretary of state must also

New language is indicated by underline, deletions by strikeout.

make available in an electronic format the names of the foreign limited partnerships whose certificates have been revoked.

**Sec. 80. [321.907] CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT OF FAILURE TO HAVE CERTIFICATE.**

(a) In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 321.206.

(b) A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(c) The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.

(d) A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this state without a certificate of authority.

(e) If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.

**Sec. 81. [321.908] ACTION BY ATTORNEY GENERAL.**

The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this article.

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**ARTICLE 10**

**ACTIONS BY PARTNERS**

**Sec. 82. [321.1001] DIRECT ACTION BY PARTNER.**

(a) Subject to subsection (b), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement of this chapter or arising independently of the partnership relationship.

(b) A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered

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

or threatened to be suffered by the limited partnership.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**Sec. 83. [321.1002] DERIVATIVE ACTION.**

A partner may maintain a derivative action to enforce a right of a limited partnership if:

(1) the partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

(2) a demand would be futile.

**Sec. 84. [321.1003] PROPER PLAINTIFF.**

A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

(1) that was a partner when the conduct giving rise to the action occurred; or

(2) whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

**Sec. 85. [321.1004] PLEADING.**

In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the general partners' response to the demand; or

(2) why demand should be excused as futile.

**Sec. 86. [321.1005] PROCEEDS AND EXPENSES.**

(a) Except as otherwise provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff;

(2) if the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited partnership.

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

## ARTICLE 11

## CONVERSION AND MERGER

Sec. 87. [321.1101] DEFINITIONS.In this article:

(1) "Constituent limited partnership" means a constituent organization that is a limited partnership.

(2) "Constituent organization" means an organization that is party to a merger.

(3) "Converted organization" means the organization into which a converting organization converts pursuant to sections 321.1102 through 321.1105.

(4) "Converting limited partnership" means a converting organization that is a limited partnership.

(5) "Converting organization" means an organization that converts into another organization pursuant to section 321.1102.

(6) "General partner" means a general partner of a limited partnership.

(7) "Governing statute" of an organization means the statute that governs the organization's internal affairs.

(8) "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(9) "Organizational documents" means:

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

(B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

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

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

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

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

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



(10) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

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

(B) by the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(11) "Surviving organization" means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

**Sec. 88. [321.1102] CONVERSION.**

(a) An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization pursuant to this section and sections 321.1103 through 321.1105 and a plan of conversion, if:

(1) the other organization's governing statute authorizes the conversion;

(2) the conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

(1) the name and form of the organization before conversion;

(2) the name and form of the organization after conversion; and

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization.

**Sec. 89. [321.1103] ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED PARTNERSHIP.**

(a) Subject to section 321.1110, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(b) Subject to section 321.1110 and any contractual rights, after a conversion is approved, and at any time before a filing is made under section 321.1104, a converting limited partnership may amend the plan or abandon the planned conversion:

(1) as provided in the plan; and

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

(2) except as prohibited by the plan, by the same consent as was required to approve the plan.

**Sec. 90. [321.1104] FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.**

(a) After a plan of conversion is approved:

(1) a converting limited partnership shall deliver to the secretary of state for filing articles of conversion, which must include:

(A) a statement that the limited partnership has been converted into another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted organization;

(D) a statement that the conversion was approved as required by this chapter;

(E) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(F) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the secretary of state may use for the purposes of section 321.1105(c); and

(2) if the converting organization is not a converting limited partnership, the converting organization shall deliver to the secretary of state for filing a certificate of limited partnership, which must include, in addition to the information required by section 321.201:

(A) a statement that the limited partnership was converted from another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

(2) if the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

**Sec. 91. [321.1105] EFFECT OF CONVERSION.**

(a) An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

New language is indicated by underline, deletions by strikeout.

(b) When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization;

(2) all debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of article 8.

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 321.117(c) and (d).

**Sec. 92. [321.1106] MERGER.**

(a) A limited partnership may merge with one or more other constituent organizations pursuant to this section and sections 321.1107 through 321.1109 and a plan of merger, if:

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

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

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

(b) A plan of merger must be in a record and must include:

(1) the name and form of each constituent organization;

(2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

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

(4) if the surviving organization is to be created by the merger, the surviving organizations organizational documents; and

(5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

**Sec. 93. [321.1107] ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED PARTNERSHIP.**

(a) Subject to section 321.1110, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(b) Subject to section 321.1110 and any contractual rights, after a merger is approved, and at any time before a filing is made under section 321.1108, a constituent limited partnership may amend the plan or abandon the planned merger:

(1) as provided in the plan; and

(2) except as prohibited by the plan, with the same consent as was required to approve the plan.

**Sec. 94. [321.1108] FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.**

(a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(2) each other preexisting constituent organization, by an authorized representative.

(b) The articles of merger must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) if it will be a limited partnership, the limited partnership's certificate of limited partnership; or

(B) if it will be an organization other than a limited partnership, the organizational document that creates the organization;

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

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(7) if the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the secretary of state may use for the purposes of section 321.1109(b); and

(8) any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited partnership shall deliver the articles of merger for filing in the office of the secretary of state.

(d) A merger becomes effective under this article:

(1) if the surviving organization is a limited partnership, upon the later of:

(i) compliance with subsection (c); or

(ii) subject to section 321.206(c), as specified in the articles of merger; or

(2) if the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

**Sec. 95. [321.1109] EFFECT OF MERGER.**

(a) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vest in the surviving organization;

(4) all debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and

(8) except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of article 8;

(9) if the surviving organization is created by the merger:

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

(A) if it is a limited partnership, the certificate of limited partnership becomes effective; or

(B) if it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 321.117(c) and (d).

#### **Sec. 96. [321.1110] RESTRICTIONS ON APPROVAL OF CONVERSIONS AND MERGERS AND ON RELINQUISHING LLLP STATUS.**

(a) If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless:

(1) the limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

(2) the partner has consented to the provision of the partnership agreement.

(b) An amendment to a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

(1) the limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(2) each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(c) A partner does not give the consent required by subsection (a) or (b) merely by consenting to a provision of the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all the partners.

#### **Sec. 97. [321.1111] LIABILITY OF GENERAL PARTNER AFTER CONVERSION OR MERGER.**

(a) A conversion or merger under this article does not discharge any liability under sections 321.404 and 321.607 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

New language is indicated by underline, deletions by strikeout.

(1) the provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

(2) for the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and

(3) if a person is required to pay any amount under this subsection:

(A) the person has a right of contribution from each other person that was liable as a general partner under section 321.404 when the obligation was incurred and has not been released from the obligation under section 321.607; and

(B) the contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) In addition to any other liability provided by law:

(1) a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:

(A) does not have notice of the conversion or merger; and

(B) reasonably believes that:

(i) the converted or surviving business is the converting or constituent limited partnership;

(ii) the converting or constituent limited partnership is not a limited liability limited partnership; and

(iii) the person is a general partner in the converting or constituent limited partnership; and

(2) a person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:

(A) immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership; and

(B) at the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:

(i) does not have notice of the dissociation;

(ii) does not have notice of the conversion or merger; and

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

(iii) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

**Sec. 98. [321.1112] POWER OF GENERAL PARTNERS AND PERSONS DISSOCIATED AS GENERAL PARTNERS TO BIND ORGANIZATION AFTER CONVERSION OR MERGER.**

(a) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(1) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 321.402; and

(2) at the time the third party enters into the transaction, the third party:

(A) does not have notice of the conversion or merger; and

(B) reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(b) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(1) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 321.402 if the person had been a general partner; and

(2) at the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:

(A) does not have notice of the dissociation;

(B) does not have notice of the conversion or merger; and

(C) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(c) If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection (a) or (b), the person is liable:

(1) to the converted or surviving organization for any damage caused to the organization arising from the obligation; and

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(2) if another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

Sec. 99. **[321.1113] CHAPTER NOT EXCLUSIVE.**

This chapter does not preclude an entity from being converted or merged under other law.

Sec. 100. **[321.1114] CONFLICT RELATING TO MERGER OR CONVERSION.**

If a partnership governed by chapter 323A participates in a merger or conversion under chapter 321, then in the event of any conflict between the provisions of chapter 323A and chapter 321 relating to the merger or conversion, the provisions of chapter 321 control chapter 321.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

Sec. 101. **[321.1201] UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 102. **[321.1202] SEVERABILITY CLAUSE.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Sec. 103. **[321.1203] RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this chapter does not modify, limit, or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

Sec. 104. **[321.1206] APPLICATION TO EXISTING RELATIONSHIPS.**

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

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

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

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

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

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

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

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

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

(2) all limited partnerships, including each limited partnership formed under chapter 322A which has previously elected to become governed by this chapter and each limited partnership formed under chapter 322 which has elected, previously or otherwise, to be governed by this chapter.

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

(1) section 321.104(c) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before the limited partnership became subject to this chapter;

(2) the limited partnership is not required to amend its certificate of limited partnership to comply with section 321.201(a)(4);

(3) sections 321.601 and 321.602 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before the limited partnership became subject to this chapter;

(4) section 321.603(4) does not apply;

(5) section 321.603(5) does not apply and a court has the same power to expel a general partner as the court had immediately before the limited partnership became subject to this chapter; and

(6) section 321.801(3) does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before the limited partnership became subject to this chapter;

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

(1) if immediately before the limited partnership that is a limited liability limited partnership under section 322A.88 became subject to this chapter its name complied with section 322A.02, the limited partnership may maintain its name even if the name does not comply with section 321.108(c); and

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

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

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

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

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

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

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

#### Sec. 105. [321.1207] SAVINGS CLAUSE.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

#### Sec. 106. [321.1208] EFFECT OF DESIGNATION.

Except as otherwise provided in this chapter, a limited partnership remains the same entity for purposes of holding title to or conveying an interest in real or personal property and for all other purposes:

(1) during the winding up of the limited partnership following its dissolution;

(2) whether the certificate of limited partnership of a limited partnership is amended to add or delete a statement that the limited partnership is a limited liability limited partnership pursuant to section 406(b)(2); and

(3) regardless of whether the words "limited partnership," "limited liability limited partnership," or the designation "LP," "L.P.," "LLLP," or "L.L.L.P." are used in an instrument conveying an interest in real or personal property to or from the limited partnership or in any other writing.

#### Sec. 107. REPEALER.

Minnesota Statutes 2002, sections 322A.01; 322A.02; 322A.03; 322A.04; 322A.05; 322A.06; 322A.07; 322A.11; 322A.12; 322A.13; 322A.14; 322A.15; 322A.16; 322A.17; 322A.18; 322A.19; 322A.24; 322A.25; 322A.26; 322A.27; 322A.28; 322A.31; 322A.32; 322A.33; 322A.34; 322A.35; 322A.38; 322A.39; 322A.40; 322A.41; 322A.45; 322A.46; 322A.47; 322A.48; 322A.49; 322A.50; 322A.51; 322A.52; 322A.55; 322A.56; 322A.57; 322A.58; 322A.59; 322A.63;

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322A.64; 322A.65; 322A.66; 322A.69; 322A.70; 322A.71; 322A.72; 322A.73; 322A.74; 322A.75; 322A.76; 322A.761; 322A.79; 322A.80; 322A.81; 322A.82; 322A.85; 322A.86; 322A.87; and 322A.88, are repealed effective January 1, 2007.

**Sec. 108. EFFECTIVE DATE.**

This act is effective January 1, 2005.

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**ARTICLE 13**

**CONFORMING CHANGES**

Sec. 109. Minnesota Statutes 2002, section 5.25, subdivision 1, is amended to read:

Subdivision 1. **WHO MAY BE SERVED.** A process, notice, or demand required or permitted by law to be served upon an entity governed by chapter 221, 302A, 303, 317A, 321, 322A, 322B, 323, 330, 540, or 543 may be served on: (1) the registered agent, if any; (2) if no agent has been appointed then on an officer, manager, or general partner of the entity; or (3) if no agent, officer, manager, or general partner can be found at the address on file with the secretary of state, the secretary of state as provided in this section.

Sec. 110. Minnesota Statutes 2002, section 302A.115, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS; PROHIBITIONS.** The corporate name:

(a) Shall be in the English language or in any other language expressed in English letters or characters;

(b) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&;

(c) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;

(d) Shall be distinguishable upon the records in the office of the secretary of state from the name of each domestic corporation, limited partnership, limited liability partnership, and limited liability company, whether profit or nonprofit, and each foreign corporation, limited partnership, limited liability partnership, and limited liability company authorized or registered to do business in this state, whether profit or nonprofit, and each name the right to which is, at the time of incorporation, reserved as provided for in sections 302A.117, ~~322A.03~~ 321.109, 322B.125, or 333.001 to 333.54, unless there is filed with the articles one of the following:

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

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

(3) The applicant's affidavit that the corporation, limited partnership, or limited liability company with the name that is not distinguishable has been incorporated or on file in this state for at least three years prior to the affidavit, if it is a domestic corporation, limited partnership, or limited liability company, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign corporation, limited partnership, or limited liability company, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit; that the corporation, limited partnership, or limited liability company or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the corporation, limited partnership, or limited liability company or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the corporation or limited liability company or in care of the agent of the limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, stating that the applicant intends to use a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee corporation, limited partnership, limited liability company, or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the corporation, limited partnership, or limited liability company with the name that is not distinguishable in the county in which is located the registered office of the corporation, limited partnership, or limited liability company shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the corporation, limited partnership, limited liability company, or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

Sec. 111. Minnesota Statutes 2002, section 308A.121, subdivision 1, is amended to read:

Subdivision 1. **NAME.** The name of a cooperative must distinguish the cooperative upon the records in the Office of the Secretary of State from the name of a domestic corporation, whether profit or nonprofit, or a limited partnership, or a

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foreign corporation or a limited partnership authorized or registered to do business in this state, whether profit or nonprofit, a limited liability company, whether domestic or foreign, a limited liability partnership, whether domestic or foreign, or a name the right to which is, at the time of incorporation, reserved or provided for in sections 302A.117, 317A.117, ~~322A.03~~ 321.109, 322B.125, or 333.001 to 333.54.

Sec. 112. Minnesota Statutes 2002, section 317A.115, subdivision 2, is amended to read:

Subd. 2. **NAME MUST BE DISTINGUISHABLE.** (a) A corporate name must be distinguishable upon the records in the Office of the Secretary of State from the name of a domestic corporation or limited partnership, a foreign corporation or limited partnership authorized or registered to do business in this state, whether profit or nonprofit, a limited liability company, whether domestic or foreign, a limited liability partnership, whether domestic or foreign, or a name the right to which is, at the time of incorporation, reserved, registered, or provided for in section 317A.117, 302A.117, ~~322A.03~~ 321.109, 322B.125, or sections 333.001 to 333.54, unless one of the following is filed with the articles:

(1) the written consent of the organization having the name that is not distinguishable;

(2) a certified copy of a final decree of a court in this state establishing the prior right of the applicant to use its corporate name in this state; or

(3) an affidavit of nonuse of the kind required by section 302A.115, subdivision 1, paragraph (d), clause (3).

(b) The secretary of state shall determine whether a name is distinguishable from another name for purposes of this section and section 317A.117.

(c) This subdivision does not affect the right of a corporation existing on January 1, 1991, or a foreign corporation authorized to do business in this state on that date, to use its corporate name.

Sec. 113. Minnesota Statutes 2002, section 322B.12, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS AND PROHIBITIONS.** The limited liability company name must:

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

(2) contain the words "limited liability company," or must contain the abbreviation "LLC" or, in the case of an organization formed pursuant to chapter 319B, must meet the requirements of section 319B.05 applicable to a limited liability company;

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

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

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(5) be distinguishable upon the records in the Office of the Secretary of State from the name of each domestic limited liability company, limited liability partnership, corporation, and limited partnership, whether profit or nonprofit, and each foreign limited liability company, limited liability partnership, corporation, and limited partnership authorized or registered to do business in this state, whether profit or nonprofit, and each name the right to which is, at the time of organization, reserved as provided for in sections 302A.117, 317A.117, ~~322A.03~~ 321.109, 322B.125, or 333.001 to 333.54, unless there is filed with the articles of organization one of the following:

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

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

(iii) the applicant's affidavit that the limited liability company, corporation, or limited partnership with the name that is not distinguishable has been organized, incorporated, or on file in this state for at least three years prior to the affidavit, if it is a domestic limited liability company, corporation, or limited partnership, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign limited liability company, corporation, or limited partnership, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit, that the limited liability company, corporation, or limited partnership or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the limited liability company, corporation, or limited partnership or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the limited liability company or corporation or in care of the agent of the limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, stating that the applicant intends to use a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee limited liability company, corporation, or limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the limited liability company, corporation, or limited partnership with the name that is not distinguishable in the county in which is located the registered office of the limited liability company, corporation, or limited partnership shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no

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knowledge that the limited liability company, corporation, or limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

Sec. 114. Minnesota Statutes 2002, section 323A.1-01, is amended to read:

323A.1-01 **DEFINITIONS.**

In this chapter:

- (1) "Business" includes every trade, occupation, and profession.
- (2) "Debtor in bankruptcy" means a person who is the subject of:
  - (i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
  - (ii) a comparable order under federal, state, or foreign law governing insolvency.
- (3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
- (4) "Executed" means signed.
- (5) "Filed" or "filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed, and accompanied by a filing fee of \$135, has been delivered to the secretary of state. The secretary of state shall endorse on the document the word "Filed" and the month, day, and year of filing; record the document in the office of the secretary of state; and return a document to the person who delivered it for filing.
- (6) "Foreign limited liability partnership" means a partnership that:
  - (i) is formed under laws other than the laws of this state; and
  - (ii) has the status of a limited liability partnership under those laws.
- (7) "Limited liability partnership" means a partnership that has filed a statement of qualification under section 323A.10-01 and does not have a similar statement in effect in any other jurisdiction.
- (8) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit, including a limited liability partnership, formed under section 323A.2-02, predecessor law, or comparable law of another jurisdiction.
- (9) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
- (10) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

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(11) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest in property.

(14) "Record," "recorded," and "recording" mean that a certified copy of a statement meeting the applicable requirements of this chapter as filed with the secretary of state has been delivered to and filed in the office of the county recorder or registrar of titles, ~~whichever office maintains the records for the real property affected by such statement and, recorded in the Office of the County Recorder in the county in which the real property affected by the statement is located or, if the real property is registered land under chapter 508 or 508A, that the statement is memorialized on the certificate of title for the affected real~~ that property.

(15) "Signed" means that:

(i) the signature of a person has been written on a document, as provided in section 645.44, subdivision 14; and

(ii) with respect to a document that may be filed with the secretary of state, the document has been signed by a person authorized to do so by this chapter, by the partnership agreement, or by a resolution approved as provided in the partnership agreement.

A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Statement" means a statement of partnership authority under section 323A.3-03, a statement of denial under section 323A.3-04, a statement of dissociation under section 323A.7-04, a statement of dissolution under section 323A.8-05, a statement of merger under section 323A.9-07, a statement of qualification under section 323A.10-01, a statement of foreign qualification under section 323A.11-02, or an amendment or cancellation of any of the foregoing.

(18) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

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## ARTICLE 14

## OTHER BUSINESS ORGANIZATIONS

Section 1. Minnesota Statutes 2002, section 302A.011, subdivision 21, is amended to read:

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

Sec. 2. Minnesota Statutes 2002, section 302A.011, subdivision 31, is amended to read:

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

Sec. 3. Minnesota Statutes 2002, section 302A.011, subdivision 49, is amended to read:

Subd. 49. **INTERESTED SHAREHOLDER.** (a) "Interested shareholder," when used in reference to any issuing public corporation, means any person that is (1) the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation or (2) an affiliate or associate of the issuing public corporation and that, at any time within the four-year period immediately before the date in question, was the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the then outstanding shares entitled to vote of the issuing public corporation. ~~Notwithstanding anything stated in this subdivision,~~

(b) If a person who has not been a beneficial owner of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation immediately prior to a repurchase of shares by, or recapitalization of, the issuing public corporation or similar action shall become a beneficial owner of ten percent or more of the voting power solely as a result of the share repurchase, recapitalization, or similar action, the person shall not be deemed to be the beneficial owner of ten percent or more of the voting power for purposes of paragraph (a), clause (1) or (2), unless:

(i) (1) the repurchase, recapitalization, conversion, or similar action was proposed by or on behalf of, or pursuant to any agreement, arrangement, relationship, understanding, or otherwise (whether or not in writing) with, the person or any affiliate or associate of the person; or

(ii) (2) the person thereafter acquires beneficial ownership, directly or indirectly, of outstanding shares entitled to vote of the issuing public corporation and, immediately after the acquisition, is the beneficial owner, directly or indirectly, of ten percent

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or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation.

(b) (c) Interested shareholder does not include:

(1) the issuing public corporation or any of its subsidiaries; ~~or~~

(2) a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or its subsidiary, or a fiduciary of the plan when acting in a fiduciary capacity pursuant to the plan; or

(3) a licensed broker/dealer or licensed underwriter who:

(i) purchases shares of an issuing public corporation solely for purposes of resale to the public; and

(ii) is not acting in concert with an interested shareholder.

(d) For purposes of this subdivision, shares beneficially owned by a plan described in paragraph (c), clause (2), or by a fiduciary of a plan described in paragraph (c), clause (2), pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan.

Sec. 4. Minnesota Statutes 2002, section 302A.011, subdivision 51, is amended to read:

Subd. 51. **SHARE ACQUISITION DATE.** "Share acquisition date," with respect to any person and any issuing public corporation, means the date that the person first becomes an interested shareholder of the issuing public corporation; provided, however, that in the event, Notwithstanding the foregoing provisions of this subdivision:

(a) if a person becomes, on one or more dates, an interested shareholder of the issuing public corporation, but thereafter ceases to be an interested shareholder of the issuing public corporation, and subsequently again becomes an interested shareholder, "share acquisition date," with respect to that person means the date on which the person most recently became an interested shareholder of the issuing public corporation; and

(b) if, on or after August 1, 2004, a person is the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation at the time the issuing public corporation becomes a publicly held corporation, "share acquisition date," with respect to that person means the date on which the person first became the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding shares entitled to vote of the corporation.

Sec. 5. Minnesota Statutes 2002, section 302A.011, is amended by adding a subdivision to read:

Subd. 63. **CONVERTED ORGANIZATION.** "Converted organization" means the corporation or domestic limited liability company resulting from a conversion under sections 302A.681 to 302A.691.

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

Sec. 6. Minnesota Statutes 2002, section 302A.011, is amended by adding a subdivision to read:

Subd. 64. CONVERTING ORGANIZATION. "Converting organization" means the corporation or domestic limited liability company that effects a conversion under sections 302A.681 to 302A.691.

Sec. 7. Minnesota Statutes 2002, section 302A.111, subdivision 2, is amended to read:

**Subd. 2. STATUTORY PROVISIONS THAT MAY BE MODIFIED ONLY IN ARTICLES.** The following provisions govern a corporation unless modified in the articles:

- (a) a corporation has general business purposes (section 302A.101);
- (b) a corporation has perpetual existence and certain powers (section 302A.161);
- (c) the power to adopt, amend, or repeal the bylaws is vested in the board (section 302A.181);
- (d) a corporation must allow cumulative voting for directors (section 302A.215, subdivision 2);
- (e) the affirmative vote of a majority of directors present is required for an action of the board (section 302A.237);
- (f) a written action by the board taken without a meeting must be signed by all directors (section 302A.239);
- (g) the board may authorize the issuance of securities and rights to purchase securities (section 302A.401, subdivision 1);
- (h) all shares are common shares entitled to vote and are of one class and one series (section 302A.401, subdivision 2, clauses (a) and (b));
- (i) all shares have equal rights and preferences in all matters not otherwise provided for by the board (section 302A.401, subdivision 2, clause (b));
- (j) the par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes (section 302A.401, subdivision 2, clause (c));
- (k) the board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends, divisions, or combinations, and determine the value of nonmonetary consideration (section 302A.405, subdivision 1);
- (l) shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends, divisions, or combinations, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued (section 302A.405, subdivision 1);
- (m) a corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board (section 302A.409);

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

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

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

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

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

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

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

Sec. 8. Minnesota Statutes 2002, section 302A.137, is amended to read:

**302A.137 CLASS OR SERIES VOTING ON AMENDMENTS.**

The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class or series;

(b) effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series, or effect a combination of outstanding shares of a class or series into a lesser number of shares of the class or series where each other class and series is not subject to a similar combination;

(c) effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;

(d) change the rights or preferences of the shares of the class or series;

~~(e) Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of another class or series;~~

~~(f)~~ (d) create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;

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(g) ~~(e)~~ divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;

(h) ~~(f)~~ limit or deny any existing preemptive rights of the shares of the class or series; or

(i) ~~(g)~~ cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

Sec. 9. Minnesota Statutes 2002, section 302A.215, is amended to read:

**302A.215 ~~CUMULATIVE VOTING FOR DIRECTORS;~~ CUMULATIVE VOTING.**

Subdivision 1. **REQUIRED VOTE.** Unless otherwise provided in the articles, directors are elected by a plurality of the voting power of the shares present and entitled to vote on the election of directors at a meeting at which a quorum is present.

Subd. 2. **CUMULATIVE VOTING RIGHTS.** Unless the articles provide that there shall be no cumulative voting, and except as provided in section 302A.223, subdivision 5, each shareholder entitled to vote for directors has the right to cumulate those votes in the election of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:

(a) The presiding officer at the meeting shall announce, before the election of directors, that shareholders shall cumulate their votes; and

(b) Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares, or by distributing all of those votes on the same principle among any number of candidates.

Subd. 2. **3. MODIFICATIONS OF CUMULATIVE VOTING.** No amendment to the articles or bylaws ~~which~~ that has the effect of denying, limiting, or modifying the right to cumulative voting for directors provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

Sec. 10. Minnesota Statutes 2002, section 302A.231, subdivision 4, is amended to read:

Subd. 4. **CALLING MEETINGS; NOTICE.** (a) 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.

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

(b) Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given. The notice is deemed given if by:

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

(2) electronic mail, when directed to an electronic mail address at which the director has consented to receive notice; and

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

(c) Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent so given may be relied upon until revoked by the director, provided that no revocation affects the validity of any notice given before receipt of revocation of the consent.

Sec. 11. Minnesota Statutes 2002, section 302A.231, subdivision 6, is amended to read:

Subd. 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, by authenticated electronic communication, 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. 12. Minnesota Statutes 2002, section 302A.401, subdivision 3, is amended to read:

Subd. 3. **PROCEDURE FOR FIXING TERMS.** (a) Subject to any restrictions in the articles, the power granted in subdivision 2 may be exercised by a resolution or resolutions approved by the affirmative vote of the directors required by section 302A.237 establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles or by resolution of the directors:

(1) may be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and

(2) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

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(b) A statement setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption shall be filed with the secretary of state before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles; provided, however, where the shareholders have received notice of the creation of shares with rights or preferences not set forth in the articles before the issuance of the shares, the statement may be filed any time within one year after the issuance of the shares. The resolution is effective when the statement has been filed with the secretary of state; or, if it is not required to be filed with the secretary of state before the issuance of shares, on the date of its adoption by the directors.

(c) Filing a statement filed with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles for purposes of sections 302A.135, 302A.137, and 302A.471. Filing an amendment of such a statement with the secretary of state is considered an amendment of the articles for purposes of sections 302A.135, 302A.137, and 302A.471.

Sec. 13. Minnesota Statutes 2002, section 302A.402, subdivision 2, is amended to read:

Subd. 2. **WHEN SHAREHOLDER APPROVAL REQUIRED; FILING OF ARTICLES OF AMENDMENT.** (a) Articles of amendment must be adopted by the board and the shareholders under sections section 302A.135 and, if required, section 302A.137 to effect a division or combination if, as a result of the proposed division or combination:

(1) the rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or

(2) the percentage of authorized shares of any class or series remaining unissued after the division or combination will exceed the percentage of authorized shares of that class or series that were unissued before the division or combination.

(b) If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by section 302A.139.

Sec. 14. Minnesota Statutes 2002, section 302A.437, subdivision 1, is amended to read:

Subdivision 1. **MAJORITY REQUIRED.** Except for the election of directors, which is governed by section 302A.215, the shareholders shall take action by the affirmative vote of the holders of the greater of (1) a majority of the voting power of the shares present and entitled to vote on that item of business, or (2) a majority of the voting power of the minimum number of the shares entitled to vote that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles require a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

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Sec. 15. Minnesota Statutes 2002, section 302A.441, is amended to read:

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

**Subdivision 1. METHOD.** 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 articles of a corporation that is not a publicly held corporation may provide that any action may be taken by written action signed, or consented to by authenticated electronic communication, by shareholders having voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all shareholders requires the approval of all of the shareholders entitled to vote on the amendment.

**Subd. 2. EFFECTIVE TIME.** The written action is effective when it has been signed, or consented to by authenticated electronic communication, by all of these the required shareholders, unless a different effective time is provided in the written action.

**Subd. 3. NOTICE AND LIABILITY.** When written action is permitted to be taken by less than all shareholders, all shareholders must be notified of its text and effective time no later than five days after the effective time of the action. Failure to provide the notice does not invalidate the written action. A shareholder who does not sign or consent to the written action has no liability for any action authorized by the written action.

Sec. 16. Minnesota Statutes 2002, 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) unless otherwise provided in the articles, an amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder in that it:

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

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

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

(4) excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different

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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; or

(5) eliminates the right to obtain payment under this subdivision;

(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 that requires shareholder approval under section 302A.661, subdivision 1, or 2, but not including 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) a plan of conversion adopted by the corporation; or

(f) 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. 17. Minnesota Statutes 2002, section 302A.471, subdivision 3, is amended to read:

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

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

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

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(1) The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.

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

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

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

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

Sec. 18. Minnesota Statutes 2002, section 302A.473, subdivision 3, is amended to read:

Subd. 3. **NOTICE OF DISSENT.** If the proposed action must be approved by the shareholders and the corporation holds a shareholder meeting, a shareholder who is entitled to dissent under section 302A.471 and who wishes to exercise dissenters' rights must file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and must not vote the shares in favor of the proposed action.

Sec. 19. Minnesota Statutes 2002, section 302A.473, subdivision 4, is amended to read:

Subd. 4. **NOTICE OF PROCEDURE; DEPOSIT OF SHARES.** (a) After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to (i) all shareholders who have complied with subdivision 3, (ii) all shareholders who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 302A.471, and to (iii) all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:

(1) the address to which a demand for payment and certificates of certificated shares must be sent in order to obtain payment and the date by which they must be received;

(2) any restrictions on transfer of uncertificated shares that will apply after the demand for payment is received;

(3) a form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and

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(4) a copy of section 302A.471 and this section and a brief description of the procedures to be followed under these sections.

(b) In order to receive the fair value of the shares, a dissenting shareholder must demand payment and deposit certificated shares or comply with any restrictions on transfer of uncertificated shares within 30 days after the notice required by paragraph (a) was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.

Sec. 20. Minnesota Statutes 2002, section 302A.521, subdivision 1, is amended to read:

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

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

(c) "Official capacity" means (1) with respect to a director, the position of director in a corporation, (2) with respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation, and (3) with respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, governor, manager, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, governor, manager, employee, or agent, as the case may be, of the other organization or employee benefit plan.

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

(e) "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee, whose indemnification is in issue.

Sec. 21. Minnesota Statutes 2002, section 302A.651, subdivision 1, is amended to read:

Subdivision 1. **WHEN PERMITTED.** A domestic corporation may merge with, including a merger pursuant to section 302A.621, or participate in an exchange with a foreign corporation or limited liability company by following the procedures set forth in this section, if:

(1) with respect to a merger, the merger is permitted by the laws of the jurisdiction under which the foreign corporation or limited liability company is incorporated or organized; and

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(2) with respect to an exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or limited liability company is incorporated or organized.

Sec. 22. Minnesota Statutes 2002, section 302A.661, subdivision 2, is amended to read:

Subd. 2. **SHAREHOLDER APPROVAL; WHEN REQUIRED.** (a) A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote. Written notice of the meeting shall be given to all shareholders whether or not they are entitled to vote at the meeting. The written notice shall state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

(b) Shareholder approval is not required under paragraph (a) if, following the sale, lease, transfer, or other disposition of its property and assets, the corporation retains a significant continuing business activity. If a corporation retains a business activity that represented at least (1) 25 percent of the corporation's total assets at the end of the most recently completed fiscal year and (2) 25 percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of clauses (1) and (2), then the corporation will conclusively be deemed to have retained a significant continuing business activity.

**Sec. 23. [302A.681] CONVERSION OF CORPORATIONS AND LIMITED LIABILITY COMPANIES.**

Subdivision 1. CONVERSIONS AUTHORIZED. A corporation may become a domestic limited liability company, and a domestic limited liability company may become a corporation, in each case pursuant to a plan of conversion.

Subd. 2. **CERTAIN DEFINITIONS.** (a) For purposes of sections 302A.681 to 302A.691, the words, terms, and phrases in paragraphs (b) to (h) have the meanings given them.

(b) "Articles of organization" has the same meaning as it does under section 322B.03, subdivision 6.

(c) "Board of governors" has the same meaning as it does under section 322B.03, subdivision 7.

(d) "Class," when used with reference to membership interests, has the same meaning as it does under section 322B.03, subdivision 10.

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(e) "Governor" has the same meaning as it does under section 322B.03, subdivision 24.

(f) "Member" has the same meaning as it does under section 322B.03, subdivision 30.

(g) "Membership interest" has the same meaning as it does under section 322B.03, subdivision 31.

(h) "Series," when used with reference to membership interests, has the same meaning as it does under section 322B.03, subdivision 44.

**Sec. 24. [302A.683] PLAN OF CONVERSION.**

A plan of conversion must contain:

- (1) the name of the converting organization;
- (2) the name of the converted organization;
- (3) whether the converted organization is a corporation or a limited liability company;
- (4) the terms and conditions of the proposed conversion;
- (5) the manner and basis of converting each ownership interest in the converting organization into ownership interests in the converted organization or, in whole or in part, into money or other property;
- (6) a copy of the proposed articles of incorporation or articles of organization of the converted organization; and
- (7) any other provisions with respect to the proposed conversion that are deemed necessary or desirable.

**Sec. 25. [302A.685] PLAN APPROVAL.**

Subdivision 1. BOARD APPROVAL; NOTICE TO OWNERS. A resolution containing the plan of conversion must be approved by the affirmative vote of a majority of the directors or governors present at a meeting of the board of directors or the board of governors of the converting organization and must then be submitted at a regular or a special meeting to the owners of the converting organization. Written notice must be given to every owner of the converting organization, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 302A.435 for notice of a meeting of shareholders or in the manner provided in section 322B.34 for notice of a meeting of members. The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion. A copy or short description of the plan of conversion must be included in or enclosed with the notice.

Subd. 2. APPROVAL BY OWNERS. At the meeting, a vote of the owners must be taken on the proposed plan. The plan of conversion is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares or

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membership interests entitled to vote. A class or series of shares or membership interests is entitled to vote as a class or series on the approval of the plan.

**Sec. 26. [302A.687] ARTICLES OF CONVERSION.**

Subdivision 1. CONTENTS OF ARTICLES. Upon receiving the approval required by section 302A.685, articles of conversion must be prepared that contain:

(1) the plan of conversion;

(2) the name of the converting organization immediately before the filing of the articles of conversion and the name to which the name of the converting organization is to be changed, which shall be a name that satisfies the laws applicable to the converted organization;

(3) the type of organization that the converted organization will be;

(4) a statement that the plan of conversion has been approved by the converting organization under section 302A.685; and

(5) a copy of the articles of incorporation or the articles of organization of the converted organization.

Subd. 2. ARTICLES SIGNED, FILED. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state. Filing of the articles of conversion is also deemed to be a filing with the secretary of state of the articles of incorporation or the articles of organization of the converted organization.

Subd. 3. CERTIFICATE. The secretary of state shall issue a certificate of conversion and a certificate of incorporation or a certificate of organization to the converted organization or its legal representative.

**Sec. 27. [302A.689] ABANDONMENT OF CONVERSION.**

Subdivision 1. BY SHAREHOLDERS OR PLAN. After a plan of conversion has been approved by the owners entitled to vote on the approval of the plan as provided in section 302A.685, and before the effective date of the plan, it may be abandoned:

(1) if the owners of the converting organization entitled to vote on the approval of the plan as provided in section 302A.685 have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the shares or membership interests entitled to vote;

(2) if the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(3) pursuant to subdivision 2.

Subd. 2. BY BOARD. A plan of conversion may be abandoned, before the effective date of the plan, by a resolution of the board of directors or the board of governors of the converting organization abandoning the plan of conversion approved by the affirmative vote of a majority of the directors or governors present.

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Subd. 3. FILING OF ARTICLES. If articles of conversion have been filed with the secretary of state, but have not yet become effective, the converting organization shall file with the secretary of state articles of abandonment that contain:

- (1) the name of the converting organization;
- (2) the provision of this section under which the plan is abandoned; and
- (3) if the plan is abandoned under subdivision 2, the text of the resolution abandoning the plan.

**Sec. 28. [302A.691] EFFECTIVE DATE OR TIME OF CONVERSION; EFFECT.**

Subdivision 1. EFFECTIVE DATE OR TIME. A conversion is effective when the articles of conversion are filed with the secretary of state or on a later date or at a later time specified in the articles of conversion.

Subd. 2. EFFECT ON ORGANIZATION. (a) A converted organization is for all purposes the same organization as the converting organization, having been incorporated or organized on the date that the converting organization was originally incorporated or organized.

(b) When a conversion becomes effective:

(1) if the converted organization is a corporation, the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter;

(2) if the converted organization is a limited liability company, the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a limited liability company organized under chapter 322B;

(3) all property owned by the converting organization remains vested in the converted organization;

(4) all debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(5) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred; and

(6) all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization.

Subd. 3. EFFECT ON SHAREHOLDERS OR MEMBERS. When a conversion becomes effective, each share or membership interest in the converting organization is deemed to be converted into shares or membership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan by the shareholders or the members, subject to any dissenters' rights under section 302A.471, in the case of shareholders of the converting organization, or section 322B.383, in the case of members of the converting organization.

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



Sec. 29. Minnesota Statutes 2002, section 302A.723, subdivision 1, is amended to read:

Subdivision 1. **CONTENTS.** If dissolution of the corporation is approved pursuant to section 302A.721, subdivision 2, the corporation shall file with the secretary of state a notice of intent to dissolve. The notice shall contain:

(a) the name of the corporation;

(b) the date and place of the meeting at which the resolution was approved pursuant to section 302A.721, subdivision 2; and

(c) a statement that the requisite vote of the shareholders was received, or that all the requisite shareholders entitled to vote signed a written action.

Sec. 30. Minnesota Statutes 2002, section 317A.011, is amended by adding a subdivision to read:

Subd. 3b. BALLOT. "Ballot" means a written ballot or a ballot transmitted by electronic communication.

Sec. 31. Minnesota Statutes 2002, section 317A.011, subdivision 14, is amended to read:

Subd. 14. **NOTICE.** (a) "Notice" is given by a member 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 of the corporation.

(b) Notice is given by the corporation to a director, officer, member, or other person:

(1) when mailed to the person at an address designated by the person, at the last known address of the person or, in the case of a director, officer, or member, at the address of the person in the corporate records;

(2) when communicated to the person orally;

(3) when handed to the person;

(4) 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;

(5) if the person's office is closed or the person to be notified has no office, when left at the dwelling or usual place of abode of the person with a person of suitable age and discretion residing in the house; or

(6) when provided to the person by means of electronic communication as provided under section 317A.231 or 317A.450; or

(7) when the method is fair and reasonable when all the circumstances are considered.

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(c) Notice by mail is given when deposited in the United States mail with sufficient postage. Notice is considered received when it is given.

Sec. 32. Minnesota Statutes 2002, section 317A.231, subdivision 4, is amended to read:

Subd. 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.

(c) Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given. The notice is deemed given if by:

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

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

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

(i) the posting; or

(ii) the giving of the separate notice; and

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

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.

(d) Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent so given may be relied upon until revoked by the director, provided that no revocation affects the validity of any notice given before receipt of revocation of the consent.

Sec. 33. Minnesota Statutes 2002, section 317A.231, subdivision 5, is amended to read:

Subd. 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, by authenticated

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electronic communication, 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. 34. Minnesota Statutes 2003 Supplement, section 317A.443, subdivision 2, is amended to read:

Subd. 2. **METHODS.** Unless otherwise provided in the articles or bylaws, members may take action at a meeting by voice or ballot, by unanimous action without a meeting under section 317A.445, by written ballot under section 317A.447, or by electronic remote communication under section 317A.450.

Sec. 35. Minnesota Statutes 2002, section 317A.447, is amended to read:

**317A.447 ACTION BY WRITTEN BALLOT.**

(a) Except as provided in paragraph (e) and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the corporation mails or otherwise delivers a ~~written~~ ballot to every member entitled to vote on the matter. A corporation may deliver a ballot by electronic communication only if the corporation complies with section 317A.450, subdivision 5, as if the ballot were a notice. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

(b) A written ballot must:

- (1) set forth each proposed action; and
- (2) provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot under this section is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) Solicitations for votes by written ballot must:

- (1) indicate the number of responses needed to meet the quorum requirements;
- (2) state the percentage of approvals necessary to approve each matter other than election of directors; and
- (3) specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

(f) A ballot delivered to the corporation by electronic communication is valid only if authenticated as provided in section 317A.011, subdivision 3a.

New language is indicated by underline, deletions by strikeout.

Sec. 36. Minnesota Statutes 2002, 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 foreign limited liability company 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.

Sec. 37. Minnesota Statutes 2002, 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 foreign limited liability company 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. 38. Minnesota Statutes 2002, section 322B.115, subdivision 2, is amended to read:

Subd. 2. **STATUTORY PROVISIONS THAT MAY BE MODIFIED ONLY IN ARTICLES OF ORGANIZATION OR A MEMBER CONTROL AGREEMENT.** The following provisions govern a limited liability company unless modified in the articles of organization or a member control agreement under section 322B.37:

- (1) a limited liability company has general business purposes (section 322B.10);
- (2) a limited liability company has certain powers (section 322B.20);
- (3) the power to adopt, amend, or repeal the bylaws is vested in the board of governors (section 322B.603);
- (4) a limited liability company must allow cumulative voting for governors (section 322B.63, subdivision 2);
- (5) the affirmative vote of a majority of governors present is required for an action of the board of governors (section 322B.653);
- (6) a written action by the board of governors taken without a meeting must be signed by all governors (section 322B.656);
- (7) the board may accept contributions, make contribution agreements, and make contribution allowance agreements (sections 322B.40, subdivision 1; 322B.42; and 322B.43);
- (8) all membership interests are ordinary membership interests entitled to vote and are of one class with no series (section 322B.40, subdivision 5, clauses (1) and (2));
- (9) all membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors (section 322B.40, subdivision 5, clause (2));

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(10) the value of previous contributions is to be restated when a new contribution is accepted (section 322B.41);

(11) a member has certain preemptive rights, unless otherwise provided by the board of governors (section 322B.33);

(12) the affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a plurality of the votes cast (section 322B.63, subdivision 1) or a majority of the voting power of all membership interests entitled to vote (section 322B.35, subdivision 1);

(13) the voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members (section 322B.356);

(14) members share in distributions in proportion to the value reflected in the required records of the contributions of members (section 322B.50);

(15) members share profits and losses in proportion to the value reflected in the required records of the contributions of members (section 322B.326);

(16) a written action by the members taken without a meeting must be signed by all members (section 322B.35);

(17) members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind (section 322B.52);

(18) a member is not subject to expulsion (section 322B.306, subdivision 2);

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

(20) for limited liability companies whose existence begins before August 1, 1999, unanimous consent is required to avoid dissolution (section 322B.80, subdivision 1, clause (5)(i));

(21) the termination of a person's membership interest has specified consequences (section 322B.306); and

(22) restrictions apply to the assignment of governance rights (section 322B.313).

Sec. 39. Minnesota Statutes 2002, section 322B.155, is amended to read:

**322B.155 CLASS OR SERIES VOTING ON AMENDMENTS.**

The owners of the outstanding membership interests of a class or series are entitled to vote as a class or series upon a proposed amendment to the articles of organization, whether or not entitled to vote on the amendment by the provisions of the articles of organization, if the amendment would:

(1) effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series, or effect a combination of outstanding

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membership interests of a class or series into a lesser number of membership interests of the class or series where each other class or series is not subject to a similar combination;

(2) effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;

(3) change the rights or preferences of the membership interests of the class or series;

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

(5) create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;

(6) ~~(5)~~ divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board of governors to do so;

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

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

Sec. 40. Minnesota Statutes 2002, section 322B.346, subdivision 1, is amended to read:

Subdivision 1. **MAJORITY REQUIRED.** Except for the election of governors, which is governed by section 322B.63, the members shall take action by the affirmative vote of the owners of the greater of: (1) a majority of the voting power of the membership interests present and entitled to vote on that item of business; or (2) a majority of the voting power that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles of organization, or a member control agreement, require a larger proportion. If the articles or a member control agreement require a larger proportion than is required by this chapter for a particular action, the articles or the member control agreement control.

Sec. 41. Minnesota Statutes 2002, 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

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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. After the adoption of the initial articles or the first making of a member control agreement, an amendment to the articles or to a member control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.

Sec. 42. Minnesota Statutes 2002, section 322B.383, subdivision 1, is amended to read:

Subdivision 1. **ACTIONS CREATING DISSENTERS' RIGHTS.** Subject to a member control agreement under section 322B.37, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:

(1) unless otherwise provided in the articles, an amendment of the articles of organization, but not an amendment to a member control agreement, which materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

(i) alters or abolishes a preferential right of the membership interests;

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

(iii) alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

(iv) excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

(v) changes a member's right to resign or retire;

(vi) establishes or changes the conditions for or consequences of expulsion; or

(vii) eliminates the right to obtain payment under clause (1);

(2) a sale, lease, transfer, or other disposition of ~~all or substantially all of the property and assets of the limited liability company, but not including a transaction permitted without that requires member approval in~~ under section 322B.77, subdivision 1 2, or but not including a disposition in dissolution described in section 322B.813, subdivision 4, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;

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(3) a plan of merger to which the limited liability company is a constituent organization;

(4) a plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan; or

(5) a plan of conversion under section 302A.683; or

(6) any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member control agreement, the bylaws, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests.

Sec. 43. Minnesota Statutes 2002, section 322B.386, subdivision 3, is amended to read:

Subd. 3. **NOTICE OF DISSENT.** If the proposed action must be approved by the members and the limited liability company holds a meeting of members, a member who is entitled to dissent under section 322B.383 and who wishes to exercise dissenters' rights must file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and must not vote the membership interests in favor of the proposed action.

Sec. 44. Minnesota Statutes 2002, section 322B.386, subdivision 4, is amended to read:

Subd. 4. **NOTICE OF PROCEDURE.** (a) After the proposed action has been approved by the board of governors and, if necessary, the members, the limited liability company shall send to (i) all members who have complied with subdivision 3, (ii) all members who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 322B.383, and to (iii) all members entitled to dissent if no member vote was required, a notice that contains:

(1) the address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;

(2) a form to be used to certify the date on which the member acquired the membership interests and to demand payment; and

(3) a copy of section 322B.383 and this section and a brief description of the procedures to be followed under these sections.

(b) In order to receive the fair value of the membership interests, a dissenting member must demand payment within 30 days after the notice required by paragraph (a) was given, but the dissenter retains all other rights of a member until the proposed action takes effect.

Sec. 45. Minnesota Statutes 2002, section 322B.40, subdivision 6, is amended to read:

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Subd. 6. **PROCEDURE FOR FIXING TERMS.** (a) Subject to any restrictions in the articles of organization or a member control agreement, the power granted in subdivision 5 may be exercised by a resolution or resolutions establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles of organization, in a member control agreement, or by resolution of the board of governors:

(1) may be made dependent upon facts ascertainable outside the articles of organization, or outside the resolution or resolutions establishing the class or series, if the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles of organization or in the resolution or resolutions establishing the class or series; and

(2) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company in connection with the establishment of the class or series if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(b) A statement setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization or a member control agreement. However, where the members have received notice of the creation of membership interests with rights or preferences not set forth in the articles of organization or a member control agreement before the acceptance of the contributions with respect to the membership interests, the statement may be filed any time within one year after the acceptance of contributions. The resolution is effective when the statement has been filed with the secretary of state; or, if it is not required to be filed with the secretary of state before the acceptance of contributions, on the date of its adoption by the governors.

(c) Filing a statement filed with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles of organization for purposes of sections 322B.15, 322B.155, and 322B.383. Filing an amendment of such a statement with the secretary of state is considered an amendment of the articles for purposes of sections 322B.15, 322B.155, and 322B.383.

Sec. 46. Minnesota Statutes 2002, section 322B.63, is amended to read:

**322B.63 ~~CUMULATIVE VOTING FOR GOVERNORS;~~ CUMULATIVE VOTING.**

Subdivision 1. **REQUIRED VOTE.** Unless otherwise provided in the articles, governors are elected by a plurality of the voting power of the membership interests present and entitled to vote on the election of governors at a meeting at which a quorum is present.

Subd. 2. **CUMULATIVE VOTING RIGHTS.** Unless the articles of organization or a member control agreement provide that there is no cumulative voting, and

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except as provided in section 322B.636, subdivision 5, each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting, or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:

(1) the presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and

(2) each member shall cumulate that voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.

Subd. 2 3. **MODIFICATIONS OF CUMULATIVE VOTING.** No amendment to the articles or bylaws that has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

Sec. 47. Minnesota Statutes 2002, section 322B.643, subdivision 4, is amended to read:

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

(b) Any notice to a governor given under any provision of this chapter, the articles, a member control agreement, or the bylaws by a form of electronic communication consented to by the governor to whom the notice is given is effective when given. The notice is deemed given if by:

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

(2) electronic mail, when directed to an electronic mail address at which the governor has consented to receive notice; and

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

(c) Consent by a governor to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent so given may be relied upon until revoked by the governor, provided that no revocation affects the validity of any notice given before receipt of revocation of the consent.

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Sec. 48. Minnesota Statutes 2002, section 322B.643, subdivision 6, is amended to read:

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

Sec. 49. Minnesota Statutes 2002, section 322B.77, subdivision 2, is amended to read:

Subd. 2. **MEMBER APPROVAL AND WHEN REQUIRED.** (a) A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

(b) Member approval is not required under paragraph (a) if, following the sale, lease, transfer, or other disposition of its property and assets, the limited liability company retains a significant continuing business activity. If a limited liability company retains a business activity that represented at least (i) 25 percent of the limited liability company's total assets at the end of the most recently completed fiscal year and (ii) 25 percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of clauses (i) and (ii), then the limited liability company will conclusively be deemed to have retained a significant continuing business activity.

Sec. 50. **[322B.78] CONVERSION.**

A domestic limited liability company may convert to a domestic corporation pursuant to sections 302A.681 to 302A.691.

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## ARTICLE 15

## FISCAL YEAR 2005 FUNDING

## Section 1. CHAPTERS 321 AND 322A FILING FEES.

(a) Notwithstanding Minnesota Statutes, section 321.206 and chapter 322A, and effective July 1, 2004, the fee for filing a limited partnership is \$200; the fee for filing an amended certificate of limited partnership is \$100; the fee for filing a certificate requesting authority to transact business in Minnesota as a foreign limited partnership is \$200; and the fee for filing any other record, other than an annual registration prior to revocation of authority to transact business in Minnesota, required or permitted to be delivered for filing on a foreign limited partnership authorized to transact business in Minnesota is \$100.

(b) This section expires June 30, 2005.

## Sec. 2. APPROPRIATION.

\$75,000 is appropriated in fiscal year 2005 from the general fund to the secretary of state for purposes of implementing this act. This is a onetime appropriation.

Presented to the governor May 13, 2004

Signed by the governor May 15, 2004, 11:00 p.m.

## CHAPTER 200—S.F.No. 2231

*An act relating to peace officers; clarifying when a peace officer may recoup attorney fees and costs in a civilian complaint proceeding; amending Minnesota Statutes 2002, section 471.44, subdivision 2.*

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

Section 1. Minnesota Statutes 2002, section 471.44, subdivision 2, is amended to read:

Subd. 2. **COSTS IN DEFENSE OF CIVILIAN COMPLAINTS.** A home rule charter or statutory city, town, or county that establishes a peace officer civilian review authority to review civilian complaints about alleged peace officer misconduct shall pay the reasonable costs of legal counsel and reasonable fees incurred by the officer in defending against a complaint after probable cause is found if the complaint is a finding that the complaint is sustained by the authority, and if the complaint is subsequently not upheld at a hearing before the authority. If a complaint against a peace officer is sustained, no payment may be made under this subdivision.

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