

CHAPTER 250—H.F.No. 3076

An act relating to business organizations; regulating business corporations; clarifying terms; updating terminology to include new forms of business activity; including references to limited liability companies and their governance attributes where appropriate; regulating limited liability companies; clarifying terms; amending Minnesota Statutes 2004, sections 302A.011, subdivisions 7, 8, 12, 21, 25, 28, 31, 41, 45, 46, 58, by adding subdivisions; 302A.111, subdivision 3, by adding a subdivision; 302A.115, subdivisions 1, 5; 302A.135, by adding a subdivision; 302A.241, by adding a subdivision; 302A.401, subdivision 3; 302A.417, subdivision 7; 302A.441, subdivision 1; 302A.447, subdivision 1; 302A.461, subdivision 2; 302A.471, subdivisions 1, 3, 4; 302A.553, subdivision 1; 302A.601, subdivisions 1, 2; 302A.611, subdivision 1; 302A.613, subdivisions 1, 2; 302A.621, subdivisions 1, 2, 3, 5, 6, by adding a subdivision; 302A.626, subdivision 1; 302A.661, subdivisions 1, 4; 322B.03, subdivisions 6, 12, 19a, 20, 23, 28, 36a, 45a; 322B.115, subdivision 3, by adding a subdivision; 322B.12, subdivision 1; 322B.15, by adding a subdivision; 322B.23; 322B.31, subdivision 2; 322B.35, subdivision 1; 322B.63, subdivision 1; 322B.66, by adding a subdivision; 322B.686, subdivision 2; 322B.70, subdivisions 1, 2; 322B.71, subdivision 1; 322B.72; 322B.74; 322B.75, subdivisions 2, 3; 322B.755, subdivision 3; 322B.76; 322B.77, subdivisions 1, 4; 322B.80, subdivision 1; Minnesota Statutes 2005 Supplement, sections 302A.011, subdivision 4; 322B.02; proposing coding for new law in Minnesota Statutes, chapters 302A; 322B; repealing Minnesota Statutes 2004, section 302A.011, subdivision 2.

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

ARTICLE 1

BUSINESS CORPORATIONS

Section 1. Minnesota Statutes 2005 Supplement, section 302A.011, subdivision 4, is amended to read:

Subd. 4. **Articles.** "Articles" means, in the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of conversion, articles of abandonment, and articles of dissolution. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the foreign corporation's state of incorporation. In the case of a corporation formed under chapter 300, the term means the certificate of incorporation.

Sec. 2. Minnesota Statutes 2004, section 302A.011, subdivision 7, is amended to read:

Subd. 7. **Constituent corporation.** "Constituent corporation" means a corporation or a foreign corporation that:

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

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

Sec. 3. Minnesota Statutes 2004, section 302A.011, subdivision 8, is amended to read:

Subd. 8. **Corporation; domestic corporation.** "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.

Sec. 4. Minnesota Statutes 2004, section 302A.011, subdivision 12, is amended to read:

Subd. 12. **Foreign corporation.** "Foreign corporation" means ~~a corporation~~ an organization organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under this chapter.

Sec. 5. Minnesota Statutes 2004, section 302A.011, subdivision 21, is amended to read:

Subd. 21. **Parent.** "Parent" of a specified corporation means ~~a corporation or a foreign corporation~~ an organization that directly, or indirectly through related organizations, owns more than 50 percent of the voting power of the shares or other ownership interests entitled to vote for directors or other members of the governing body of the specified ~~corporation~~ organization.

Sec. 6. Minnesota Statutes 2004, section 302A.011, subdivision 25, is amended to read:

Subd. 25. **Related organization.** "Related organization" of a specified corporation means:

- (1) a parent or subsidiary of the specified corporation;
- (2) another subsidiary of a parent of the specified corporation;
- (3) a limited liability company owning, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation;
- (4) a limited liability company having more than 50 percent of the voting power of its membership interests entitled to vote for ~~governors~~ members of its governing body owned directly or indirectly by the specified corporation;
- (5) a limited liability company having more than 50 percent of the voting power of its membership interests entitled to vote for ~~governors~~ members of its governing body owned directly or indirectly either (i) by a parent of the specified corporation or (ii) a limited liability company owning, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation; or
- (6) a corporation having more than 50 percent of the voting power of its shares entitled to vote for ~~director~~ directors owned directly or indirectly by a limited liability company owning, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation.

Sec. 7. Minnesota Statutes 2004, section 302A.011, subdivision 28, is amended to read:

Subd. 28. **Share.** "Share" means one of the units, however designated, into which the shareholders' proprietary ownership interests in a corporation are divided.

Sec. 8. Minnesota Statutes 2004, section 302A.011, subdivision 31, is amended to read:

Subd. 31. **Subsidiary.** "Subsidiary" of a specified ~~corporation~~ organization means ~~a corporation or a foreign corporation~~ an organization having more than 50 percent of the voting power of its shares or other ownership interests entitled to vote for directors or other members of the governing body of the organization owned directly, or indirectly through related organizations, by the specified ~~corporation~~ organization.

Sec. 9. Minnesota Statutes 2004, section 302A.011, subdivision 41, is amended to read:

Subd. 41. **Beneficial owner; beneficial ownership.** (a) "Beneficial owner," when used with respect to shares or other securities, includes, but is not limited to, any person who, directly or indirectly through any written or oral agreement, arrangement, relationship, understanding, or otherwise, has or shares the power to vote, or direct the voting of, the shares or securities or has or shares the power to dispose of, or direct the disposition of, the shares or securities, except that:

(1) a person shall not be deemed the beneficial owner of shares or securities tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares or securities are accepted for purchase or exchange; and

(2) a person shall not be deemed the beneficial owner of shares or securities with respect to which the person has the power to vote or direct the voting arising solely from a revocable proxy given in response to a proxy solicitation required to be made and made in accordance with the applicable rules and regulations under the Securities Exchange Act of 1934 and is not then reportable under that act on a Schedule 13D or comparable report, or, if the corporation is not subject to the rules and regulations under the Securities Exchange Act of 1934, would have been required to be made and would not have been reportable if the corporation had been subject to the rules and regulations.

(b) "Beneficial ownership" includes, but is not limited to, the right to acquire shares or securities through the exercise of options, warrants, or rights, or the conversion of convertible securities, or otherwise. The shares or securities subject to the options, warrants, rights, or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding shares or securities of the class or series owned by the person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class or series owned by any other person. A person shall be deemed the beneficial owner of shares and securities beneficially owned by any relative or spouse of the person or any relative of the spouse, residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor or in a similar fiduciary capacity, any ~~corporation or entity~~ organization in which the person owns ten percent or more of the equity, and any affiliate of the person.

(c) When two or more persons act or agree to act as a partnership, limited partnership, syndicate, or other group for the purposes of acquiring, owning, or voting shares or other securities of a corporation, all members of the partnership, syndicate, or other group are deemed to constitute a "person" and to have acquired beneficial ownership, as of the date they first so act or agree to act together, of all shares or securities of the corporation beneficially owned by the person.

Sec. 10. Minnesota Statutes 2004, section 302A.011, subdivision 45, is amended to read:

Subd. 45. **Associate.** "Associate," when used to indicate a relationship with any person, means any of the following:

(1) any ~~corporation or~~ organization of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class or series of shares entitled to vote or other equity interest;

(2) any trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or executor or in a similar fiduciary capacity;

(3) any relative or spouse of the person, or any relative of the spouse, residing in the home of the person.

Sec. 11. Minnesota Statutes 2004, section 302A.011, subdivision 46, is amended to read:

Subd. 46. **Business combination.** "Business combination," when used in reference to any issuing public corporation and any interested shareholder of the issuing public corporation, means any of the following:

(a) any merger of the issuing public corporation or any subsidiary of the issuing public corporation with (1) the interested shareholder or (2) any other ~~domestic or foreign corporation~~ organization (whether or not itself an interested shareholder of the issuing public corporation) that is, or after the merger would be, an affiliate or associate of the interested shareholder, but excluding ~~(1)(i)~~ the merger of a wholly-owned subsidiary of the issuing public corporation into the issuing public corporation, ~~(2)(ii)~~ the merger of two or more wholly-owned subsidiaries of the issuing public corporation, or ~~(3)(iii)~~ the merger of a ~~corporation~~ an organization, other than an interested shareholder or an affiliate or associate of an interested shareholder, with a wholly-owned subsidiary of the issuing public corporation pursuant to which the surviving ~~corporation~~ organization, immediately after the merger, becomes a wholly-owned subsidiary of the issuing public corporation;

(b) any exchange, pursuant to a plan of exchange under section 302A.601, subdivision 2, or a comparable statute of any other state or jurisdiction, of shares or other securities of the issuing public corporation or any subsidiary of the issuing corporation or money, or other property for shares, other securities, money, or property of (1) the interested shareholder or (2) any other ~~domestic or foreign corporation~~ organization (whether or not itself an interested shareholder of the issuing public corporation) that is, or after the exchange would be, an affiliate or associate of the interested shareholder, but excluding the exchange of shares of a domestic or foreign corporation, other than an interested shareholder or an affiliate or associate of an interested shareholder, pursuant to which the domestic or foreign corporation, immediately after the exchange, becomes a wholly-owned subsidiary of the issuing public corporation;

(c) any sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in a single transaction or a series of transactions), other than sales of goods or services in the ordinary course of business or redemptions pursuant to section 302A.671, subdivision 6, to or with the interested shareholder or any affiliate or associate of the interested shareholder, other than to or with the issuing public corporation or a wholly-owned subsidiary of the issuing public corporation, of assets of the issuing public corporation or any subsidiary of the issuing public corporation (1) having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the issuing public corporation, (2) having an aggregate market value equal to ten percent or more of the aggregate market value of all the outstanding shares of the issuing public corporation, or (3) representing ten percent or more of the earning power or net income, determined on a consolidated basis, of the issuing public corporation except a cash dividend or distribution paid or made pro rata to all shareholders of the issuing public corporation;

(d) the issuance or transfer by the issuing public corporation or any subsidiary of the issuing public corporation (in a single transaction or a series of transactions) of any shares of, or other ownership interests in, the issuing public corporation or any subsidiary of the issuing public corporation that have an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the issuing public corporation to the interested shareholder or any affiliate or associate of the interested shareholder, except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend or distribution paid or made, pro rata to all shareholders of the issuing public corporation other than for the purpose, directly or indirectly, of facilitating or effecting a subsequent transaction that would have been a business combination if the dividend or distribution had not been made;

(e) the adoption of any plan or proposal for the liquidation or dissolution of the issuing public corporation, or any reincorporation of the issuing public corporation in another state or jurisdiction, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with, the interested shareholder or any affiliate or associate of the interested shareholder;

(f) any reclassification of securities (including without limitation any share dividend or split, reverse share split, or other distribution of shares in respect of shares), recapitalization of the issuing public corporation, merger of the issuing public corporation with any subsidiary of the issuing public corporation, exchange of shares of the issuing public corporation with any subsidiary of the issuing public corporation, or other transaction (whether or not with or into or otherwise involving the interested shareholder), proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with, the interested shareholder or any affiliate or associate of the interested shareholder, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of shares entitled to vote, or securities that are exchangeable for, convertible into, or carry a right to acquire shares entitled to vote, of the issuing public corporation or any subsidiary of the issuing public corporation that is, directly or indirectly, owned by the interested shareholder or any affiliate or associate of the interested shareholder, except as a result of immaterial changes due to fractional share adjustments;

(g) any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit, directly or indirectly (except proportionately as a shareholder of the issuing public corporation), of any loans, advances, guarantees, pledges, or other financial assistance, or any tax credits or other tax advantages provided by or through the issuing public corporation or any subsidiary of the issuing public corporation.

Sec. 12. Minnesota Statutes 2004, section 302A.011, subdivision 58, is amended to read:

Subd. 58. **Ownership interests.** "Ownership interests" means shares in the case of a corporation or foreign corporation ~~and~~ membership interests in the case of a ~~domestic or foreign~~ limited liability company, and governance or transferable interests in the case of any other organization.

Sec. 13. Minnesota Statutes 2004, section 302A.011, is amended by adding a subdivision to read:

Subd. 65. **Governing body.** "Governing body" means the body of an organization selected by its owners that has the ultimate power to determine the organization's policies and control its activities. The governing body of a domestic corporation is its board of directors, and the governing body of a domestic limited liability company is its board of governors.

Sec. 14. Minnesota Statutes 2004, section 302A.011, is amended by adding a subdivision to read:

Subd. 66. **Limited liability company.** "Limited liability company" means either a domestic or a foreign limited liability company, unless specified otherwise in this chapter.

Sec. 15. Minnesota Statutes 2004, section 302A.111, subdivision 3, is amended to read:

Subd. 3. **Statutory provisions that may be modified either in articles or in bylaws.** The following provisions govern a corporation unless modified either in the articles or in the bylaws:

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

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

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

- (d) a certain method must be used for filling board vacancies (section 302A.225);
- (e) if the board fails to select a place for a board meeting, it must be held at the principal executive office (section 302A.231, subdivision 1);
- (f) the notice of a board meeting need not state the purpose of the meeting (section 302A.231, subdivision 3);
- (g) a majority of the board is a quorum for a board meeting (section 302A.235);
- (h) a committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present (section 302A.241, subdivision 2), and a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee (section 302A.241, subdivision 2a);
- (i) the board may establish a special litigation committee (section 302A.241);
- (j) the chief executive officer and chief financial officer have specified duties, until the board determines otherwise (section 302A.305);
- (k) officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so (section 302A.351);
- (l) the ~~board~~ corporation may establish uncertificated shares (section 302A.417, subdivision 7);
- (m) regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions (section 302A.431);
- (n) in all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten-days notice is required for a meeting of shareholders (section 302A.435, subdivision 2);
- (o) the number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting (section 302A.443);
- (p) the board may fix a date up to 60 days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting (section 302A.445, subdivision 1);
- (q) indemnification of certain persons is required (section 302A.521); and
- (r) the board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement (section 302A.551, subdivision 1).

Sec. 16. Minnesota Statutes 2004, section 302A.111, is amended by adding a subdivision to read:

Subd. 7. **Dependence on facts outside of the articles.** Except for provisions included pursuant to subdivision 1, any provision of the articles may:

(a) be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and

(b) incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

Sec. 17. Minnesota Statutes 2004, 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, 321.0109, 322B.125, or 333.001 to 333.54, unless there is filed with the articles 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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. 18. Minnesota Statutes 2004, section 302A.115, subdivision 5, is amended to read:

Subd. 5. **Use of name by successor corporation.** A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that is incorporated 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.

Sec. 19. Minnesota Statutes 2004, section 302A.135, is amended by adding a subdivision to read:

Subd. 7. **Change of corporate name.** An amendment that only changes a corporation's corporate name may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in subdivisions 2, 3, and 4.

Sec. 20. Minnesota Statutes 2004, section 302A.241, is amended by adding a subdivision to read:

Subd. 2a. **Subcommittees.** Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or context clearly indicates that a different meaning is intended, any reference to a committee is deemed to include a subcommittee, and any reference to a committee member is deemed to include a subcommittee member.

Sec. 21. Minnesota Statutes 2004, 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.~~

(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 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. 22. Minnesota Statutes 2004, section 302A.417, subdivision 7, is amended to read:

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

Sec. 23. **[302A.439] CONTRACTUAL REQUIREMENT TO SUBMIT MATTER TO SHAREHOLDERS.**

A corporation may agree to submit a matter to its shareholders whether or not the board of directors determines, at any time after approving the matter, that the matter is no longer advisable and recommends that shareholders reject it.

Sec. 24. Minnesota Statutes 2004, section 302A.441, subdivision 1, is amended to read:

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, but in no event may written action be taken by holders of less than a majority of the voting power of all shares entitled to vote on that action. 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.

Sec. 25. Minnesota Statutes 2004, section 302A.447, subdivision 1, is amended to read:

Subdivision 1. **Shares held by other corporation.** Shares of a corporation registered in the name of another domestic or foreign corporation may be voted by the chief executive officer or another legal representative of that domestic or foreign corporation.

Sec. 26. Minnesota Statutes 2004, section 302A.461, subdivision 2, is amended to read:

Subd. 2. **Other documents required.** A corporation shall keep at its principal executive office, or, if its principal executive office is outside of this state, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subdivision 4, originals or copies of:

- (a) records of all proceedings of shareholders for the last three years;
- (b) records of all proceedings of the board for the last three years;
- (c) its articles and all amendments currently in effect;
- (d) its bylaws and all amendments currently in effect;

- (e) financial statements required by section 302A.463 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
- (f) reports made to shareholders generally within the last three years;
- (g) a statement of the names and usual business addresses of its directors and principal officers;
- (h) voting trust agreements described in section 302A.453;
- (i) shareholder control agreements described in section 302A.457; and
- (j) a copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under section ~~302A.401, subdivision 3~~ 302A.111, subdivision 7.

Sec. 27. Minnesota Statutes 2004, 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 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 property and assets of the corporation that requires shareholder approval under section 302A.661, subdivision 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~~ organization, except as provided in subdivision 3;

(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. 28. Minnesota Statutes 2004, 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~~ organization in a plan of exchange with respect to shares of the shareholder that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

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

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

(1) The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York Stock Exchange or 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. the Nasdaq Stock Market.

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

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

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

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

Sec. 29. Minnesota Statutes 2004, section 302A.471, subdivision 4, is amended to read:

Subd. 4. **Other rights.** The shareholders of a corporation who have a right under this section to obtain payment for their shares, or who would have the right to obtain payment for their shares absent the exception set forth in paragraph (c) of subdivision 3, do not have a right at law or in equity to have a corporate action described in subdivision 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

Sec. 30. Minnesota Statutes 2004, section 302A.553, subdivision 1, is amended to read:

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

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

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

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

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

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

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

Sec. 31. Minnesota Statutes 2004, section 302A.601, subdivision 1, is amended to read:

Subdivision 1. **Merger.** ~~Any two~~ A corporation may merge with one or more domestic or foreign corporations may merge, resulting in a single domestic or foreign corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 302A.611 to 302A.651.

Sec. 32. Minnesota Statutes 2004, section 302A.601, subdivision 2, is amended to read:

Subd. 2. **Exchange.** A corporation may acquire all of the outstanding shares of one or more classes or series of another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in sections 302A.611 to 302A.615, and 302A.631 to 302A.651.

Sec. 33. Minnesota Statutes 2004, section 302A.611, subdivision 1, is amended to read:

Subdivision 1. **Contents of plan.** A plan of merger or exchange shall contain:

(a) The names of the constituent organizations proposing to merge or participate in an exchange, and:

(1) in the case of a merger, the name of the surviving organization;

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

(b) The terms and conditions of the proposed merger or exchange;

(c)(1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of, or other ownership interests in, the surviving organization or of any other organization, or, in whole or in part, into money or other property; or

(2) In the case of an exchange, the manner and basis of exchanging the shares to be acquired for securities of, or other ownership interests in, the acquiring organization or any other organization or, in whole or part, into money or other property;

(d) In the case of a merger, a statement of any amendments to the articles of incorporation or organization of the surviving organization proposed as part of the merger; and

(e) Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

Sec. 34. Minnesota Statutes 2004, section 302A.613, subdivision 1, is amended to read:

Subdivision 1. **Board approval; notice to shareholders.** A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and shall then be submitted at a regular or a special meeting to the

shareholders of (i) each constituent corporation, in the case of a plan of merger, and (ii) the corporation whose shares will be acquired by the acquiring organization in the exchange, in the case of a plan of exchange. ~~The plan of merger or exchange may require that it be submitted to the shareholders whether or not the board of directors determines at any time after the board of directors' initial approval of the plan that the plan is no longer advisable and recommends that the shareholders reject it.~~ If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this section, written notice shall be given to every shareholder of a corporation, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 302A.435 for notice of meetings of shareholders. The written notice shall state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange shall be included in or enclosed with the notice. If the merger or exchange is with a domestic or foreign limited liability company, the plan of merger or exchange must also be approved in the manner required by the laws of the state under which the limited liability company is organized.

Sec. 35. Minnesota Statutes 2004, section 302A.613, subdivision 2, is amended to read:

Subd. 2. **Approval by owners.** (a) At the meeting a vote of the owners shall be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote and, if the merger or exchange is with a domestic or foreign limited liability company, when approved in the manner required by the laws of the state under which the limited liability company is organized. Except as provided in paragraph (b), a class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

(b) ~~A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation or exchange of the shares of the class or series if the plan of merger or exchange effects a cancellation or exchange of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 302A.471, or would have the right to obtain payment for their shares absent the exception set forth in paragraph (c) of section 302A.471, subdivision 3, in the event of the merger or exchange.~~

Sec. 36. Minnesota Statutes 2004, section 302A.621, subdivision 1, is amended to read:

Subdivision 1. **When authorized; contents of plan.** ~~A parent owning~~ If either the parent or the subsidiary is a domestic corporation, a parent that is a domestic or foreign corporation or limited liability company owning at least 90 percent of the outstanding shares of each class and series of a subsidiary that is a domestic or foreign corporation or limited liability company directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the shareholders or other owners of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors or other members of the governing body of the parent present shall set forth a plan of merger that contains:

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

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

(3) if the parent is a constituent ~~corporation~~ organization but is not the surviving ~~corporation~~ organization in the merger, a provision for the pro rata issuance of shares or other ownership interests of the surviving ~~corporation~~ organization to the holders of shares or other ownership interests of the parent on surrender of any certificates for shares or other ownership interests of the parent; and

(4) if the surviving ~~corporation~~ organization is a subsidiary, a statement of any amendments to the articles of the surviving ~~corporation~~ organization that will be part of the merger.

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

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

Sec. 37. Minnesota Statutes 2004, section 302A.621, subdivision 2, is amended to read:

Subd. 2. **Notice to shareholders of subsidiary.** ~~Notice~~ If the subsidiary is a domestic corporation, notice of the action, including a copy of the plan of merger, shall be given to each shareholder, other than the parent and any subsidiary, of each such subsidiary that is a constituent corporation in the merger before, or within ten days after, the effective date of the merger.

Sec. 38. Minnesota Statutes 2004, section 302A.621, is amended by adding a subdivision to read:

Subd. 2a. **Approval of parent's shareholders; when required.** (a) Notwithstanding subdivision 1:

(1) if the parent is a domestic corporation and the conditions of section 302A.613, subdivision 3, are not met with respect to the parent, then the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 302A.613; and

(2) if the parent is a limited liability company or a foreign corporation and not the surviving organization in the merger, then the resolution is not effective unless it is also approved in accordance with the laws under which the parent is organized or incorporated.

(b) Notwithstanding paragraph (a), if the parent is a constituent corporation and the surviving corporation in the merger, it may change its corporate name, without shareholder approval, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the directors of the parent present. Upon the effective date of the merger, the parent's corporate name shall be changed.

Sec. 39. Minnesota Statutes 2004, section 302A.621, subdivision 3, is amended to read:

Subd. 3. **Articles of merger; contents of articles.** Articles of merger shall be prepared that contain:

(1) the plan of merger;

(2) the number of outstanding shares or other ownership interests of each class and series of each subsidiary that is a constituent ~~corporation~~ organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of shares of each class and series or other ownership interests of the subsidiary or subsidiaries, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly, or indirectly through related organizations; and

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

Sec. 40. Minnesota Statutes 2004, section 302A.621, subdivision 5, is amended to read:

Subd. 5. **Certificate.** The secretary of state shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent ~~corporation~~ organization but is not the surviving ~~corporation~~ organization in the merger, to the surviving ~~corporation~~ organization or its legal representative.

Sec. 41. Minnesota Statutes 2004, section 302A.621, subdivision 6, is amended to read:

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

Sec. 42. Minnesota Statutes 2004, section 302A.626, 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) "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section.

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

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

Sec. 43. Minnesota Statutes 2004, section 302A.661, subdivision 1, is amended to read:

Subdivision 1. **Shareholder approval; when not required.** A corporation may, by affirmative vote of a majority of the directors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, and without shareholder approval:

(1) sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

(2) grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

(3) transfer any or all of its property to ~~a corporation~~ an organization all the shares or other ownership interests of which are owned by the corporation.

Sec. 44. Minnesota Statutes 2004, section 302A.661, subdivision 4, is amended to read:

Subd. 4. **Transferee liability.** The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state. A disposition of all or substantially all of a corporation's property and assets under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee shall not be liable solely because it is deemed to be a continuation of the transferor.

Sec. 45. **REPEALER.**

Minnesota Statutes 2004, section 302A.011, subdivision 2, is repealed.

Sec. 46. **EFFECTIVE DATE.**

Sections 1 to 45 are effective August 1, 2006.

ARTICLE 2

LIMITED LIABILITY COMPANIES

Section 1. Minnesota Statutes 2005 Supplement, section 322B.02, is amended to read:

322B.02 LAWS NOT TO APPLY.

Sections 222.19, 222.23, and chapters 301, 316, and 556 do not apply to a limited liability company organized under or governed by this chapter.

Sec. 2. Minnesota Statutes 2004, section 322B.03, subdivision 6, is amended to read:

Subd. 6. **Articles or articles of organization.** "Articles" or "articles of organization" means, in the case of a limited liability company organized under or governed by this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of conversion, articles of abandonment, and articles of termination. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the foreign limited liability company's state of organization.

Sec. 3. Minnesota Statutes 2004, section 322B.03, subdivision 12, is amended to read:

Subd. 12. **Constituent organization.** "Constituent organization" means a limited liability company or a foreign limited liability company or a domestic corporation or a foreign corporation that:

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

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

Sec. 4. Minnesota Statutes 2004, section 322B.03, subdivision 19a, is amended to read:

Subd. 19a. **Foreign corporation.** "Foreign corporation" means ~~a corporation~~ an organization organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under chapter 302A.

Sec. 5. Minnesota Statutes 2004, section 322B.03, subdivision 20, is amended to read:

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

Sec. 6. Minnesota Statutes 2004, section 322B.03, subdivision 23, is amended to read:

Subd. 23. **Governing board body.** ~~"Governing board" means the board of governors in the case of a~~ "Governing body" means the body of an organization that has been charged with managing or directing the management of the business and affairs of the organization and which, if not the owners themselves, is responsible directly to the owners of the organization. In the case of a domestic limited liability company and the board of directors, the governing body is the board of governors, and in the case of a domestic corporation the governing body is the board of directors.

Sec. 7. Minnesota Statutes 2004, section 322B.03, subdivision 28, is amended to read:

Subd. 28. **Limited liability company; domestic limited liability company.** "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by this chapter.

Sec. 8. Minnesota Statutes 2004, section 322B.03, subdivision 36a, is amended to read:

Subd. 36a. **Parent.** "Parent" of a specified ~~limited liability company~~ organization means ~~a limited liability company or a foreign limited liability company~~ an organization that directly or indirectly through related organizations owns more than 50 percent of the voting power of the membership interests, shares, or other ownership interests entitled to vote for governors, directors, or other members of the governing body of the specified ~~limited liability company~~ organization.

Sec. 9. Minnesota Statutes 2004, section 322B.03, subdivision 45a, is amended to read:

Subd. 45a. **Subsidiary.** "Subsidiary" of a specified ~~limited liability company~~ organization means ~~a limited liability company or a foreign limited liability company~~ an organization of which more than 50 percent of the voting power of its membership interests, shares, or other ownership interests entitled to vote for governors, directors, or other members of the governing body of the organization is owned directly or indirectly through related organizations by the specified ~~limited liability company~~ organization.

Sec. 10. Minnesota Statutes 2004, section 322B.115, subdivision 3, is amended to read:

Subd. 3. **Statutory provisions that may be modified either in articles of organization, a member control agreement, or in the bylaws.** The following provisions govern a limited liability company unless modified in the articles of organization, a member control agreement under section 322B.37 or in the bylaws:

(1) governors serve for an indefinite term that expires at the next regular meeting of members (section 322B.616);

(2) the compensation of governors is fixed by the board of governors (section 322B.623);

(3) a certain method must be used for removal of governors (section 322B.636);

- (4) a certain method must be used for filling board of governor vacancies (section 322B.64);
- (5) if the board of governors fails to select a place for a board meeting, it must be held at the principal executive office (section 322B.643, subdivision 1);
- (6) the notice of a board of governors meeting need not state the purpose of the meeting (section 322B.643, subdivision 3);
- (7) a majority of the board of governors is a quorum for a board meeting (section 322B.65);
- (8) a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present (section 322B.66, subdivision 2), and a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to the subcommittee any or all of the authority of the committee (section 322B.66, subdivision 3);
- (9) the board may establish a special litigation committee (section 322B.66);
- (10) the chief manager and treasurer have specified duties, until the board of governors determines otherwise (section 322B.673);
- (11) managers may delegate some or all of their duties and powers, if not prohibited by the board of governors from doing so (section 322B.689);
- (12) regular meetings of members need not be held, unless demanded by a member under certain conditions (section 322B.333);
- (13) in all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members (section 322B.34, subdivision 2);
- (14) for a quorum at a members' meeting there is required a majority of the voting power of the membership interests entitled to vote at the meeting (section 322B.353);
- (15) the board of governors may fix a date up to 60 days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting (section 322B.356, subdivision 1);
- (16) indemnification of certain persons is required (section 322B.699);
- (17) the board of governors may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement (section 322B.54, subdivision 1); and
- (18) members have no right to interim distributions except as provided through the bylaws or an act of the board of governors (section 322B.51).

Sec. 11. Minnesota Statutes 2004, section 322B.115, is amended by adding a subdivision to read:

Subd. 7. **Dependence on facts outside the articles.** Except for provisions included pursuant to subdivision 1, any provision of the articles of organization may:

(1) be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and

(2) incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

Sec. 12. Minnesota Statutes 2004, 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
- (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, 321.0109, 322B.125, or 333.001 to 333.54, unless there is filed with the articles of organization one of the following:
 - (i) the written consent of the domestic limited liability company, limited liability partnership, corporation, or limited partnership or the foreign limited liability company, limited liability partnership, corporation, or limited partnership authorized or registered to do business in this state or the holder of a reserved name or a name filed by or registered with the secretary of state under sections 333.001 to 333.54 having a name that is not distinguishable;
 - (ii) a certified copy of a final decree of a court in this state establishing the prior right of the applicant to the use of the name in this state; or
 - (iii) the applicant's affidavit that the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership with the name that is not distinguishable has been organized, incorporated, or on file in this state for at least three years prior to the affidavit, if it is a domestic limited liability company, corporation, or limited partnership, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign limited liability company, corporation, or limited partnership, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit, that the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the domestic or foreign limited liability company or domestic or foreign corporation or in care of the agent of the domestic or foreign limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, stating that the applicant intends to use a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee of the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership with the name that is not distinguishable in the county in which is located the registered office of the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership shown in the records of the secretary of state or has been unable to find any telephone

listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

Sec. 13. Minnesota Statutes 2004, section 322B.15, is amended by adding a subdivision to read:

Subd. 6. **Change of limited liability company name.** An amendment that only changes a limited liability company's limited liability company name may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in subdivisions 2, 3, and 4.

Sec. 14. Minnesota Statutes 2004, section 322B.23, is amended to read:

322B.23 TRANSACTION OF BUSINESS OUTSIDE MINNESOTA.

By enacting this chapter the Minnesota legislature recognizes the limited liability company as an important and constructive form of business organization. The legislature understands that:

- (1) businesses organized under or governed by this chapter will often transact business in other states;
- (2) for businesses organized under or governed by this chapter to function effectively and for this chapter to be a useful enactment, this chapter must be accorded the same comity and full faith and credit that states typically accord to each other's corporate laws; and
- (3) specifically, it is essential that other states recognize both the legal existence of limited liability companies ~~formed~~ organized under or governed by this chapter and the legal status of all members of these limited liability companies.

The legislature therefore specifically seeks that, subject to any reasonable registration requirements, other states extend to this chapter the same full faith and credit under section 1 of Article IV of the Constitution of the United States, and the same comity, that Minnesota extends to statutes that other states enact to provide for the establishment and operation of business organizations.

Sec. 15. Minnesota Statutes 2004, section 322B.31, subdivision 2, is amended to read:

Subd. 2. **Effect of assignment of financial rights.** An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the limited liability company, or to cause dissolution. ~~The assignment may not allow the assignee to control the member's exercise of governance rights.~~

Sec. 16. **[322B.348] CONTRACTUAL REQUIREMENT TO SUBMIT MATTER TO MEMBERS.**

A limited liability company may agree to submit a matter to its members whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that members reject it.

Sec. 17. Minnesota Statutes 2004, section 322B.35, subdivision 1, is amended to read:

Subdivision 1. **Method.** An action required or permitted to be taken at a meeting of the members may be taken by written action signed, or consented to by authenticated electronic communication, by all of the members. If the articles or a member control agreement so provide, any action may be taken by written

action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present, but in no event may written action be taken by members holding less than a majority of the voting power of all membership interests entitled to vote on the action. After the adoption of the initial articles or the first making of a member control agreement, an amendment to the articles or to a member control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.

Sec. 18. Minnesota Statutes 2004, section 322B.63, subdivision 1, is amended to read:

Subdivision 1. **Required vote.** Unless otherwise provided in the articles or a member control agreement, governors are elected by a plurality of the voting power of the membership interests present and entitled to vote on the election of governors at a meeting at which a quorum is present.

Sec. 19. Minnesota Statutes 2004, section 322B.66, is amended by adding a subdivision to read:

Subd. 7. **Subcommittees.** Unless otherwise provided in the articles, the bylaws, a member control agreement, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or context clearly indicates that a different meaning is intended, any reference to a committee is deemed to include a subcommittee, and any reference to a committee member is deemed to include a subcommittee member.

Sec. 20. Minnesota Statutes 2004, section 322B.686, subdivision 2, is amended to read:

Subd. 2. **Removal.** Unless otherwise provided in the articles of organization, the bylaws, or a member control agreement, a manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present, subject to the provisions of a. The articles of organization, the bylaws, or the member control agreement. The may provide other manners of removing a manager. Removal is without prejudice to any contractual rights of the manager.

Sec. 21. Minnesota Statutes 2004, section 322B.70, subdivision 1, is amended to read:

Subdivision 1. **Merger.** With or without a business purpose, a limited liability company may merge with:

(1) ~~with another~~ one or more limited liability ~~company~~ companies pursuant to a plan of merger approved in the manner provided in sections 322B.71 to 322B.75;

(2) ~~with a one or more domestic corporation~~ corporations under a plan of merger approved in the manner provided in sections 322B.71 to 322B.75, ~~and in chapter 302A;~~

(3) ~~with any one or more foreign corporation~~ corporations or foreign limited liability ~~company~~ companies pursuant to a plan of merger approved in the manner provided in ~~section~~ sections 322B.71 to 322B.75 and 322B.76; and

(4) ~~with~~ one or more cooperatives organized under chapter 308A or 308B, in the manner provided by and subject to the limitations in ~~section~~ sections 322B.71 to 322B.75 and 322B.755.

Sec. 22. Minnesota Statutes 2004, section 322B.70, subdivision 2, is amended to read:

Subd. 2. **Exchange.** (a) A limited liability company may acquire all of the ownership interests of one or more classes or series of another domestic or foreign limited liability company pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75.

(b) A limited liability company may acquire all of the ownership interests of one or more classes or series of a domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75, ~~and in chapter 302A.~~

(c) A domestic corporation may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75, ~~and in chapter 302A.~~

(d) A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in ~~section~~ sections 322B.71 to 322B.75 and 322B.76.

Sec. 23. Minnesota Statutes 2004, section 322B.71, subdivision 1, is amended to read:

Subdivision 1. **Contents of plan.** A plan of merger or exchange must contain:

(1) the name of the limited liability company and each other constituent organization proposing to merge or participate in an exchange, and:

(i) in the case of a merger, the name of the surviving organization, which may be the limited liability company or ~~the other~~ another constituent organization; or

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

(2) the terms and conditions of the proposed merger or exchange;

(3)(i) in the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of, or other ownership interests in, the surviving organization or of any other organization, or, in whole or in part, into money or other property; or

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

(4) in the case of a merger, a statement of any amendments to the articles of organization or articles of incorporation, as the case may be, of the surviving organization proposed as part of the merger; and

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

Sec. 24. Minnesota Statutes 2004, section 322B.72, is amended to read:

322B.72 PLAN APPROVAL BY LIMITED LIABILITY COMPANY.

Subdivision 1. ~~Governing Board of governors approval and notice to owners members.~~ A resolution containing the plan of merger or exchange must be approved by the affirmative vote of a majority of the board members present at a meeting of the ~~governing~~ board of governors of each constituent organization that is a limited liability company and must then be submitted at a regular or a special meeting to the ~~owners of:~~

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

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

~~The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners members of the limited liability company.~~

If members owning any class or series of ownership membership interest of an organization in the limited liability company are entitled to vote on the plan of merger or exchange pursuant to this section, written notice must be given to every owner of that organization member of the limited liability company, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section ~~302A.435~~ for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 322B.34 for notice of meetings of members in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

Subd. 2. **Approval by owners members.** (a) At the meeting a vote of the owners members must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership membership interests entitled to vote. Except as provided in paragraph (b) or a member control agreement, a class or series of ownership membership interests of the organization limited liability company is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization, entitle the class or series of ownership membership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

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

Subd. 3. **Approval by other constituent domestic corporation organizations.** If a constituent organization in the merger or exchange is with a domestic corporation an organization other than a limited liability company, the plan of merger or exchange must also be approved in the manner provided ~~in chapter 302A~~ for in the statute that governs that constituent organization.

Sec. 25. Minnesota Statutes 2004, section 322B.74, is amended to read:

322B.74 ABANDONMENT BY LIMITED LIABILITY COMPANY.

Subdivision 1. **By owners members or plan.** After a plan of merger or exchange has been approved by the owners members entitled to vote on the approval of the plan as provided in section 322B.72, and before the effective date of the plan, it may be abandoned:

(1) if the owners of ownership interests members of each of the limited liability company that is a constituent organizations organization who hold membership interests entitled to vote on the approval of the plan as provided in section 322B.72 ~~have approved~~ approve the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the ownership membership interests entitled to vote and, if the owners of members of a limited liability company that is a constituent organization are not entitled to vote on the approval of the plan under section 322B.72, the governing board of governors of that limited liability company has approved the abandonment by the affirmative vote of a majority of the board members present, and the abandonment has been approved in the manner provided ~~in chapter 302A~~ by any for in the statute that governs each constituent organization that is a domestic corporation not a limited liability company;

(2) if the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(3) pursuant to subdivision 2.

Subd. 2. **By the governing board of governors.** A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution ~~of the governing board of any constituent organization that is a limited liability company abandoning that~~ abandons the plan of merger or exchange and is approved by the ~~affirmative vote of a majority of the board members present~~ board of governors of any limited liability company that is a constituent, subject to the contract rights of any other person under the plan. ~~Abandonment by the board of a constituent organization that is a domestic corporation may be accomplished as provided in chapter 302A.~~

Subd. 3. **Filing of articles.** If articles of merger or exchange have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under subdivision 1, clause (1), the constituent organizations or any one of them, in the case of abandonment under subdivision 1, clause (2), or the abandoning organization in the case of abandonment under subdivision 2, shall file with the secretary of state articles of abandonment that contain:

(1) the names of the constituent organizations;

(2) the provision of this section under which the plan is abandoned; and

(3) if the plan is abandoned under subdivision 2, the text of the resolution that was approved by the ~~affirmative vote of a majority of the board members present~~ board of governors abandoning the plan.

Sec. 26. Minnesota Statutes 2004, section 322B.75, subdivision 2, is amended to read:

Subd. 2. **Effect on constituent organizations.** When a merger becomes effective:

(1) the constituent organizations become a single entity, the surviving limited liability company or corporation, as the case may be;

(2) the separate existence of all constituent organizations except the surviving organization ceases;

(3) as to any limited liability company that was a constituent organization and is not the surviving organization, the articles of merger serve as the articles of termination, and, unless previously filed, the notice of dissolution;

(4)(i) if the surviving organization is a limited liability company, the surviving limited liability company has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a limited liability company ~~organized~~ under this chapter; and

(ii) if the surviving organization is ~~a domestic corporation~~ not a limited liability company, the surviving ~~domestic corporation~~ organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of ~~a domestic corporation organized under chapter 302A~~ the organization under its governing law;

(5) the surviving organization, whether a limited liability company ~~or~~, a foreign limited liability company, a domestic ~~or~~ corporation, a foreign corporation, or a cooperative organized under chapter 308A or 308B, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be. The title to any real estate or any interest

in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;

(6) the surviving organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations. A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization. Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and

(7) the articles of organization or articles of incorporation, as the case may be, of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

Sec. 27. Minnesota Statutes 2004, section 322B.75, subdivision 3, is amended to read:

Subd. 3. **Effect on owners members.** When a merger or exchange becomes effective, the ~~ownership membership~~ interests in a limited liability company to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are considered to be exchanged in the case of an exchange. The ~~owners of members owning~~ those ~~ownership membership~~ interests are entitled only to the ~~ownership interests~~, securities, money, or other property into which those ~~ownership membership~~ interests have been converted or for which those ~~ownership membership~~ interests have been exchanged in accordance with the plan, subject to any dissenters' rights under section ~~302A.471 or~~ 322B.383, ~~as the case may be.~~

Sec. 28. Minnesota Statutes 2004, section 322B.755, subdivision 3, is amended to read:

Subd. 3. **Abandonment.** Section 308B.835 governs the abandonment by a domestic cooperative of a merger authorized by this section. ~~Section 322B.74 governs the abandonment by a limited liability company of a merger authorized by this section, except that for the purposes of a merger authorized by this section:~~

~~(1) the term "constituent organization" as used in section 322B.74, subdivision 1, clause (1), does not include a domestic cooperative;~~

~~(2) the requirement stated in section 322B.74, subdivision 1, clause (1), as to a domestic corporation does not apply and instead the abandonment must have been approved by the domestic cooperative in the manner provided in chapter 308B;~~

~~(3) the reference in section 322B.74, subdivision 2, to a domestic corporation does not apply and instead the abandonment by the domestic cooperative may be accomplished as provided in chapter 308B; and~~

~~(4) the term "constituent organization" as used in section 322B.74, subdivision 3, includes a domestic cooperative.~~

Sec. 29. Minnesota Statutes 2004, section 322B.76, is amended to read:

322B.76 MERGER OR EXCHANGE WITH FOREIGN CORPORATION OR A FOREIGN LIMITED LIABILITY COMPANY.

Subdivision 1. **When permitted.** A limited liability company may merge with or participate in an exchange with a foreign corporation or a foreign limited liability company by following the procedures set forth in this section, if:

(1) with respect to a merger, the merger is permitted by the laws of the state under which the foreign corporation or foreign limited liability company is incorporated or organized; and

(2) with respect to an exchange, the organization whose ownership interests will be acquired is either a limited liability company or a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign corporation or foreign limited liability company is incorporated or organized.

Subd. 2. **Laws applicable before transaction.** Each limited liability company shall comply with the provisions of sections 322B.70 to 322B.76 with respect to the merger or exchange of ownership interests of organizations and each foreign corporation or foreign limited liability company shall comply with the applicable provisions of the laws under which it was incorporated or organized or by which it is governed.

Subd. 3. **Surviving domestic limited liability company.** If the surviving organization in a merger will be a domestic limited liability company, it shall comply with all the provisions of this chapter.

Subd. 4. **Surviving foreign corporation or foreign limited liability company.** If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, it shall comply, as the case may be, with the provisions of chapter 303 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies. In every case the surviving foreign corporation or foreign limited liability company shall file with the secretary of state:

(1) an agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;

(2) an irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

(3) an agreement that it will promptly pay to ~~the any dissenting owners of an ownership interests members of each constituent domestic limited liability company and constituent domestic corporation~~ the amount, if any, to which they are entitled under section ~~302A.473 or 322B.386, as the case may be.~~

Sec. 30. Minnesota Statutes 2004, section 322B.77, subdivision 1, is amended to read:

Subdivision 1. **Member approval and when not required.** A limited liability company may, by affirmative vote of a majority of the governors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, and without member approval:

(1) sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

(2) grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

(3) transfer any or all of its property to ~~a corporation~~ an organization all the ~~shares~~ ownership interests of which are owned by the limited liability company.

Sec. 31. Minnesota Statutes 2004, section 322B.77, subdivision 4, is amended to read:

Subd. 4. **Transferee liability.** The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state. A disposition of all or substantially all of a limited liability company's properties and assets under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee is not liable solely because it is deemed to be a continuation of the transferor.

Sec. 32. Minnesota Statutes 2004, section 322B.80, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

Sec. 33. **EFFECTIVE DATE.**

Sections 1 to 32 are effective August 1, 2006.

Presented to the governor May 22, 2006

Signed by the governor May 31, 2006, 11:10 p.m.