CHAPTER 39--H.F.No. 385

An act relating to business organizations; modifying conversion provisions;amending Minnesota Statutes 2014, sections 66A.02, subdivision 4; 302A.011, subdivisions 19, 22, 63, 64, 68, by adding a subdivision; 302A.471, subdivision 1; 302A.691; 302A.692; 322B.03, subdivision 37, by adding subdivisions; 322B.383, subdivision 1; 322C.0105, subdivision 2, by adding a subdivision; 322C.0110, subdivisions 4, 7; 322C.0201, subdivision 2; 322C.0203, subdivision 1; 322C.0404, subdivision 1; 322C.0407, subdivisions 1, 4; 322C.0408, subdivision 6; 322C.0410, subdivision 2; 322C.0502, subdivision 4; 322C.0902; 322C.1001, subdivisions 11, 12; 322C.1007; 322C.1009; 322C.1101, subdivision 5; 322C.1204, subdivision 3; proposing coding for new law in Minnesota Statutes, chapters 302A; 322B; repealing Minnesota Statutes 2014, sections 302A.681; 302A.683; 302A.685; 302A.687; 302A.689; 322B.78; Laws 2014, chapter 157, article 2, sections 10; 11; 12; 13; 14; 15; 16; 30.

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

Section 1. Minnesota Statutes 2014, section 66A.02, subdivision 4, is amended to read:

Subd. 4. **Exceptions.** The following provisions of chapter 302A do not apply to domestic mutual insurance companies: sections 302A.011, subdivisions 2, 6, 6a, 7, 10, 20, 21, 25, 26, 27, 28, 29, 31, 32, and 37 to 59; 302A.105; 302A.137; 302A.161, subdivision 19; 302A.201, subdivision 2; 302A.401 to 302A.429; 302A.433, subdivisions 1, paragraphs (a), (b), (c), and (e), and 2; 302A.437, subdivision 2; 302A.443; 302A.445, subdivisions 3 to 6; 302A.449, subdivision 7; 302A.453 to 302A.457; 302A.461; 302A.463; 302A.471 to 302A.473; 302A.553; 302A.601 to 302A.651; 302A.671 to 302A.675; ~~302A.681~~ 302A.682 to 302A.691; and 302A.701 to 302A.791. Those clauses of section 302A.111 that refer to any of the sections previously referenced in this subdivision do not apply to domestic mutual insurance companies. The following sections of chapter 302A are modified in their application to domestic mutual insurance companies in the manner indicated:

(1) with regard to section 302A.133, the articles may be amended pursuant to section 302A.171 by the incorporators or by the board before the issuance of any policies by the company;

(2) with regard to section 302A.135, subdivision 2, a resolution proposing an amendment to the certificate of authority must be filed with the corporate secretary no less than 30 days before the meeting to consider the proposed amendment;

(3) with regard to section 302A.161, subdivision 19 of that section does not apply, except this must not be construed to limit the power of a mutual insurance company from issuing securities other than stock;

(4) with regard to section 302A.201, the references in subdivision 1 of that section to "subdivision 2" and "section 302A.457 " do not apply;

(5) with regard to section 302A.203, the board shall consist of no less than five directors;

(6) with regard to section 302A.215, subdivisions 2 and 3 of that section only apply if the corporation's certificate of incorporation provides cumulative voting;

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(7) with regard to section 302A.433, subdivision 1 of that section, special meetings of the members may be called for any purpose or purposes at any time by a person or persons authorized in the articles or bylaws to call special meetings, and with regard to subdivision 3 of that section, special meetings must be held on the date and at the time and place fixed by a person or persons authorized by the articles or bylaws to call a meeting; and

(8) with regard to section 302A.435, if the company complies substantially and in good faith with the notice requirements of section 302A.435, the company's failure to give any member or members the required notice does not impair the validity of any action taken at the members' meeting.

Sec. 2. Minnesota Statutes 2014, section 302A.011, subdivision 19, is amended to read:

Subd. 19. **Organization.** "Organization" means a ~~domestic or foreign corporation~~ general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, ~~whether domestic or foreign, partnership, limited partnership, joint venture, association,~~ business trust, ~~estate, trust, enterprise, and any other legal or commercial entity~~ corporation, or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.

Sec. 3. Minnesota Statutes 2014, section 302A.011, subdivision 22, is amended to read:

Subd. 22. **Person.** "Person" includes a natural person ~~and~~, an organization, and any other association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Sec. 4. Minnesota Statutes 2014, section 302A.011, subdivision 63, is amended to read:

Subd. 63. **Converted organization.** "Converted organization" means the ~~domestic or foreign corporation or domestic or foreign limited liability company resulting from a conversion under~~ organization into which a converting organization converts pursuant to sections ~~302A.681~~ 302A.682 to ~~302A.691~~ 302A.692.

Sec. 5. Minnesota Statutes 2014, section 302A.011, subdivision 64, is amended to read:

Subd. 64. **Converting organization.** "Converting organization" means ~~the domestic or foreign corporation or domestic or foreign limited liability company that effects a conversion under~~ an organization that converts into another organization pursuant to sections ~~302A.681~~ 302A.682 to ~~302A.691~~ 302A.692.

Sec. 6. Minnesota Statutes 2014, section 302A.011, subdivision 68, is amended to read:

Subd. 68. **Organizational documents.** "Organizational documents" means:

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

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

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

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

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

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

(6) for any other organization, the basic ~~agreements or other documents~~ records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it, in each case as provided or authorized by its governing statute.

Sec. 7. Minnesota Statutes 2014, section 302A.011, is amended by adding a subdivision to read:

Subd. 70. **Governing statute.** "Governing statute" means the statute that governs an organization's internal affairs.

Sec. 8. Minnesota Statutes 2014, 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 organization, except as provided in subdivision 3;

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(e) a plan of conversion is adopted by the corporation and becomes effective;

(f) an amendment of the articles in connection with a combination of a class or series under section 302A.402 that reduces the number of shares of the class or series owned by the shareholder to a fraction of a share if the corporation exercises its right to repurchase the fractional share so created under section 302A.423; or

(g) 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. 9. **[302A.682] CONVERSION.**

Subdivision 1. **Conversion requirements.** Pursuant to this section, sections 302A.684 to 302A.692, and a plan of conversion, another organization may convert to a domestic corporation, and a domestic corporation may convert to another organization if:

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

(2) the conversion is not prohibited by other law of this state or the law of the jurisdiction that enacted the other organization's governing statute; and

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

Subd. 2. **Contents of plan of conversion.** A plan of conversion must include:

(1) the name and form of the organization and the jurisdiction of the organization's governing statute before conversion;

(2) the name and form of the organization and the jurisdiction of the organization's governing statute after conversion;

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

(4) the organizational documents of the converted organization as they are to be in effect upon completion of the conversion.

Sec. 10. **[302A.684] ACTION ON PLAN OF CONVERSION BY CONVERTING CORPORATION.**

Subdivision 1. **Approval of plan of conversion.** Subject to section 302A.692, a plan of conversion of a converting corporation must be approved under subdivisions 2 and 3.

Subd. 2. **Board approval; notice to shareholders.** A resolution containing the plan of conversion must be approved by the affirmative vote of a majority, or more if so provided in the converting corporation's organizational documents, of the directors present at a meeting of the board of directors of the converting corporation and must then be submitted at a regular or a special meeting to the shareholders of the converting

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

corporation. Written notice must be given to every shareholder of the converting corporation, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting. The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion. A copy or short description of the plan of conversion must be included in or enclosed with the notice.

Subd. 3. **Approval by shareholders.** At the meeting, a vote of the shareholders must be taken on the proposed plan. The plan of conversion is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote. A class or series of shares is entitled to vote as a class or series on the approval of the plan unless otherwise provided in the articles or shareholder control agreement, in which case the articles or shareholder control agreement shall govern such class voting rights to the exclusion of section 302A.137.

Subd. 4. **Amendment of plan or abandonment of conversion.** Subject to section 302A.692 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the secretary of state for filing under section 302A.686, a converting corporation may amend the plan or abandon the conversion:

(1) as provided in the plan; or

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

Sec. 11. **[302A.686] FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE AND TIME.**

Subdivision 1. **Articles of conversion.** After a plan of conversion is approved:

(1) if the converting organization is a converting corporation, the converting corporation shall file articles of conversion with the secretary of state, together with a total fee of $35, which articles of conversion must be signed as provided in section 302A.011, subdivision 30, and must include:

(i) the plan of conversion;

(ii) a statement that the corporation is converting into another organization;

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

(iv) the time the conversion is effective under the governing statute of the converted organization;

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

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

(vii) if the converted organization is a foreign organization not authorized to transact business in this state, the street address of an office that the secretary of state may use for the purposes of section 302A.691, subdivision 3; and

(2) if the converting organization is not a converting corporation, the converting organization shall file articles of conversion with the secretary of state, together with a total fee of $35, which articles of conversion must be signed as provided in section 302A.011, subdivision 30, and must include:

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(i) articles of incorporation for the corporation into which the converting organization is converting, which articles of incorporation must include the information required by section 302A.111, subdivision 1, paragraphs (a) to (c);

(ii) the plan of conversion;

(iii) a statement that the converting organization is converting into a corporation;

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

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

Subd. 2. **Effective date and time of conversion.** A conversion becomes effective:

(1) if the converted organization is a corporation, when the articles of conversion are filed with the secretary of state or on a later date or at a later time specified in the articles of conversion; and

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

Subd. 3. **Certificate.** The secretary of state shall issue to the converted organization or its legal representative a certificate of conversion and, if the converted organization is a corporation, a certificate of incorporation.

Sec. 12. Minnesota Statutes 2014, section 302A.691, is amended to read:

302A.691 ~~EFFECTIVE DATE OR TIME OF CONVERSION;~~ EFFECT OF CONVERSION.

Subdivision 1. ~~**Effective date or time**~~ **Same entity.** ~~A conversion is effective when the articles of conversion are filed with the secretary of state or on a later date or at a later time specified in the articles of conversion.~~ An organization that has been converted pursuant to sections 302A.682 to 302A.692 is for all purposes the same entity that existed before the conversion.

Subd. 2. **Effect on converting organization.** ~~(a) A converted organization is for all purposes the same organization as the converting organization, having been incorporated or organized on the date that the converting organization was originally incorporated or organized.~~

~~(b)~~ When a conversion ~~becomes effective~~ takes effect:

~~(1) if the converted organization is a domestic corporation, the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter;~~

~~(2) if the converted organization is a domestic limited liability company, the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a limited liability company organized under chapter 322B;~~

~~(3)~~ (1) all property owned by the converting organization remains vested in the converted organization and no assignment by operation of law or otherwise of its assets, properties, or contracts shall be deemed to have occurred;

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

~~(4)~~ (2) all debts, ~~liabilities, and other~~ obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;

~~(5)~~ (3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred~~; and~~ or as actions or proceedings by or against the converted organization;

~~(6) all~~ (4) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, ~~and~~ powers, and purposes of the converting organization remain vested in the converted organization~~.~~; and

(5) the conversion does not dissolve a converting corporation for the purposes of sections 302A.701 to 302A.791.

Subd. 3. **~~Effect on shareholders or members~~ Foreign organization.** ~~When a conversion becomes effective, each share or membership interest in the converting organization is deemed to be converted into shares or membership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan by the shareholders or the members, subject to any dissenters' rights under section 302A.471, in the case of shareholders of a converting organization that is a domestic corporation, or section 322B.383, in the case of members of a converting organization that is a domestic limited liability company.~~ A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting corporation is liable if, before the conversion, the converting corporation was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subdivision.

Sec. 13. Minnesota Statutes 2014, section 302A.692, is amended to read:

302A.692 RESTRICTIONS ON APPROVAL OF CONVERSIONS.

Subdivision 1. **Personal liability of shareholder.** If a shareholder of a converting corporation will have personal liability with respect to a converted organization, approval or amendment of a plan of conversion is ineffective without the consent of the shareholder, unless:

(1) a valid shareholder control agreement of the converting corporation provides for approval of a conversion ~~with the consent of fewer than all the members~~ and imposition of personal liability without the consent of all shareholders against whom personal liability is imposed; ~~and~~

(2) the shareholder has consented in writing to the provision of the valid shareholder control agreement~~.~~; and

(3) the shareholder does not exercise dissenter's rights pursuant to section 302A.471.

Subd. 2. **Consent.** A shareholder does not give the consent required by subdivision 1 merely by consenting to a provision of a shareholder control agreement or any other agreement that permits the shareholder control agreement or any other agreement to be amended with the consent of fewer than all shareholders or parties to the other agreement.

Sec. 14. Minnesota Statutes 2014, section 322B.03, subdivision 37, is amended to read:

Subd. 37. **Person.** "Person" includes a natural person ~~and~~, an organization, and any other association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Sec. 15. Minnesota Statutes 2014, section 322B.03, is amended by adding a subdivision to read:

Subd. 52. **Converted organization.** "Converted organization" means the organization into which a converting limited liability company converts pursuant to sections 322B.781 to 322B.791.

Sec. 16. Minnesota Statutes 2014, section 322B.03, is amended by adding a subdivision to read:

Subd. 53. **Converting limited liability company.** "Converting limited liability company" means a domestic limited liability company other than a nonprofit limited liability company that is governed by this chapter and which converts or intends to convert into another organization pursuant to sections 322B.781 to 322B.791.

Sec. 17. Minnesota Statutes 2014, section 322B.03, is amended by adding a subdivision to read:

Subd. 54. **Governing statute.** "Governing statute" means the statute that governs an organization's internal affairs.

Sec. 18. Minnesota Statutes 2014, section 322B.03, is amended by adding a subdivision to read:

Subd. 55. **Organizational documents.** "Organizational documents" means:

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

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

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

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

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

(6) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it, in each case as provided or authorized by its governing statute.

Sec. 19. Minnesota Statutes 2014, section 322B.03, is amended by adding a subdivision to read:

Subd. 56. **Personal liability.** "Personal liability" means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

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

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

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

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

Sec. 20. Minnesota Statutes 2014, section 322B.383, subdivision 1, is amended to read:

Subdivision 1. **Actions creating dissenters' rights.** Subject to a member control agreement under section 322B.37, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:

(1) unless otherwise provided in the articles, an amendment of the articles of organization, but not an amendment to a member control agreement, which materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

(i) alters or abolishes a preferential right of the membership interests;

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

(iii) alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

(iv) excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

(v) changes a member's right to resign or retire;

(vi) establishes or changes the conditions for or consequences of expulsion; or

(vii) eliminates the right to obtain payment under clause (1);

(2) a sale, lease, transfer, or other disposition of property and assets of the limited liability company that requires member approval under section 322B.77, subdivision 2, but not including a disposition in dissolution described in section 322B.813, subdivision 4, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;

(3) a plan of merger to which the limited liability company is a constituent organization;

(4) a plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan;

(5) a plan of conversion is adopted under section ~~302A.683~~ 322B.783 and becomes effective; or

(6) any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member control agreement, the bylaws, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests.

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Sec. 21. **[322B.781] CONVERSION.**

Subdivision 1. **Conversion requirements.** Pursuant to this section, sections 322B.783 to 322B.791, and a plan of conversion, a converting limited liability company may convert to another organization if:

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

(2) the conversion is not prohibited by other law of this state or the law of the jurisdiction that enacted the other organization's governing statute; and

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

Subd. 2. **Contents of plan of conversion.** A plan of conversion must include:

(1) the name of the converting limited liability company before conversion;

(2) the name and form of the organization and the jurisdiction of the organization's governing statute after conversion;

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

(4) the organizational documents of the converted organization as they are to be in effect upon completion of the conversion.

Sec. 22. **[322B.783] ACTION ON PLAN OF CONVERSION BY CONVERTING CORPORATION.**

Subdivision 1. **Approval of plan of conversion.** Subject to section 322B.789, a plan of conversion of a converting limited liability company must be approved under subdivisions 2 and 3.

Subd. 2. **Board approval; notice to members.** A resolution containing the plan of conversion must be approved by the affirmative vote of a majority, or more if so provided in the converting limited liability company's organizational documents, of the governors present at a meeting of the board of governors of the converting limited liability company and must then be submitted at a regular or special meeting to the members of the converting limited liability company. Written notice must be given to every member of the converting limited liability company, whether or not entitled to vote at the meeting, not less than 14 days or more than 60 days before the meeting. The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion. A copy or short description of the plan of conversion must be included in or enclosed with the notice.

Subd. 3. **Approval by members.** At the meeting, a vote of the members must be taken on the proposed plan. The plan of conversion is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all membership interests entitled to vote. A class or series of membership interests is entitled to vote as a class or series on the approval of the plan unless otherwise provided in the articles or member control agreement, in which case the articles or member control agreement shall govern such class voting rights to the exclusion of section 322B.155.

Subd. 4. **Amendment of plan or abandonment of conversion.** Subject to section 322B.789 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

to the secretary of state for filing under section 322B.785, a converting limited liability company may amend the plan or abandon the conversion:

(1) as provided in the plan; or

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

Sec. 23. **[322B.785] FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE AND TIME.**

Subdivision 1. **Articles of conversion.** After a plan of conversion is approved, the converting limited liability company shall file articles of conversion with the secretary of state, together with a total fee of $35, which articles of conversion must be signed as provided in section 322B.03, subdivision 45, and must include:

(1) a statement that the limited liability company is converting into another organization;

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

(3) the time the conversion is effective under the governing statute of the converted organization;

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

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

(6) if the converted organization is a foreign organization not authorized to transact business in this state, the street address of an office that the secretary of state may use for the purposes of section 322B.791, subdivision 3.

Subd. 2. **Effective date and time of conversion.** A conversion becomes effective as provided by the governing statute of the converted organization.

Sec. 24. **[322B.789] RESTRICTIONS ON APPROVAL OF CONVERSIONS.**

Subdivision 1. **Personal liability of member.** If a member of a converting limited liability company will have personal liability with respect to a converted organization, approval or amendment of a plan of conversion is ineffective without the express written consent of the member, unless:

(1) a valid member control agreement of the limited liability company provides for approval of a conversion and imposition of personal liability without the consent of all members against whom personal liability is imposed;

(2) the member has consented in writing to the provision of the valid member control agreement; and

(3) the member does not exercise dissenter's rights pursuant to section 322B.383.

Subd. 2. **Consent.** A member does not give the consent required by subdivision 1 merely by consenting to a provision of a member control agreement or any other agreement that permits the member control agreement or any other agreement to be amended with the consent of fewer than all the members or parties to the other agreement.

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Sec. 25. **[322B.791] EFFECT OF CONVERSION.**

Subdivision 1. **Same entity.** An organization that has been converted pursuant to sections 322B.781 to 322B.791 is for all purposes the same entity that existed before the conversion.

Subd. 2. **Effect on converting limited liability company.** When a conversion takes effect:

(1) all property owned by the converting limited liability company remains vested in the converted organization and no assignment by operation of law or otherwise of its assets, properties, or contracts shall be deemed to have occurred;

(2) all debts, obligations, or other liabilities of the converting limited liability company continue as debts, obligations, or other liabilities of the converted organization;

(3) an action or proceeding pending by or against the converting limited liability company may be continued as if the conversion had not occurred or as actions or proceedings by or against the converted organization;

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

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

(6) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of sections 322B.80 to 322B.873.

Subd. 3. **Foreign organization.** A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subdivision.

Sec. 26. Minnesota Statutes 2014, section 322C.0105, is amended by adding a subdivision to read:

Subd. 1a. **Loans, guarantees, and suretyship.** Without in any way limiting the generality of the power of a limited liability company to do all things necessary or convenient to carry on its activities as conferred in subdivision 1, a limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved pursuant to this chapter and the company's operating agreement and:

(1) is in the usual and regular course of business of the limited liability company;

(2) is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a business relationship, or an organization to which the limited liability company has the power to make donations, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(3) is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or

(4) whether or not any separate consideration has been paid or promised to the limited liability company, has been approved by (i) the owners of two-thirds of the voting power of persons other than the interested person or persons, or (ii) the unanimous affirmative vote of all members, whether or not ordinarily entitled to vote.

Any such loan, guaranty, surety contract, or other financial assistance may be with or without interest and may be unsecured or may be secured in any manner including, without limitation, a grant of a security interest in a member's transferable interest in the limited liability company. This subdivision does not grant any authority to act as a bank or to carry on the business of banking.

Sec. 27. Minnesota Statutes 2014, section 322C.0105, subdivision 2, is amended to read:

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

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

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

(3) dissolving under section 322C.0701.

Sec. 28. Minnesota Statutes 2014, section 322C.0110, subdivision 4, is amended to read:

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

(1) restrict or eliminate the duty:

(i) as required in section 322C.0409, subdivisions 2, clause (1), ~~and~~ 7, and 8, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(ii) as required in section 322C.0409, subdivisions 2, clause (2), ~~and~~ 7, and 8, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(iii) as required by section 322C.0409, subdivisions 2, clause (3), ~~and~~ 7, and 8, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

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

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

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

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

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

Sec. 29. Minnesota Statutes 2014, section 322C.0110, subdivision 7, is amended to read:

Subd. 7. **Indemnification and exculpation.** The operating agreement may alter or eliminate the indemnification for a member, manager, or governor provided by section 322C.0408, subdivision ~~1~~ 2, and may eliminate or limit a member's, manager's, or governor's liability to the limited liability company and members for money damages, except for:

(1) breach of the duty of loyalty;

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

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

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

(5) an intentional violation of criminal law.

Sec. 30. Minnesota Statutes 2014, section 322C.0201, subdivision 2, is amended to read:

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

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

(2) the street address of the initial registered office and, if the limited liability company has an agent for the service of process, the name of the ~~initial~~ agent for service of process of the company at the registered office; and

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

Sec. 31. Minnesota Statutes 2014, section 322C.0203, subdivision 1, is amended to read:

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

(1) Except as otherwise provided in clauses (2) through ~~(4)~~ (5), a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

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

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

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

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

~~(5)~~ (4) A statement of denial by a person under section 322C.0303 must be signed by that person.

~~(6)~~ (5) Any other record must be signed by the person on whose behalf the record is filed with the secretary of state.

Sec. 32. Minnesota Statutes 2014, section 322C.0404, subdivision 1, is amended to read:

Subdivision 1. **Equal distributions.** Subject to section 322C.1204, subdivision 3, clause (3), items (i) through (iv), any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 322C.0502 and any charging order in effect under section 322C.0503.

Sec. 33. Minnesota Statutes 2014, section 322C.0407, subdivision 1, is amended to read:

Subdivision 1. **Member-managed default.** Except as provided in section 322C.1101, subdivision 5, with respect to nonprofit limited liability companies, a limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

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

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

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

(2) includes words of similar import.

Sec. 34. Minnesota Statutes 2014, section 322C.0407, subdivision 4, is amended to read:

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

(1) The activities and affairs of a limited liability company are to be managed by and under the direction of a board of governors, which shall consist of one or more governors as determined by members holding a majority of the voting power of the members. Except as specifically stated in this subdivision and section ~~322C.0204~~ 322C.0202, subdivision 5, subject to section 322C.0302:

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

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

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

(2) A governor must be a natural person. A person need not be a member to be a governor, but the dissociation of a member who is also a governor disqualifies the person as a governor. If a person who is both a governor and a member ceases to be a governor, that cessation does not by itself dissociate the person

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

as a member. A person's ceasing to be a governor does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a governor.

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

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

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

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

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

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

(i) Notice may be:

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

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

(C) communicated to the governor orally;

(D) handed to the governor;

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

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

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

(ii) The notice is deemed given if by:

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

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

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

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

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

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

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

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

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

(13) An action required or permitted to be taken at a board meeting may be taken by written action signed by the number of governors that would be required to take the same action at a meeting of the board of governors at which all governors were present. The written action is effective when signed by the required number of governors, unless a different effective time is provided in the written action. When written action is permitted to be taken by less than all governors, all governors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) amend the operating agreement.

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(17) Subject to section 322C.1204, subdivision 3, for purposes of this subdivision, each member possesses voting power in proportion to the member's interest in ~~then current profits~~ distributions of the limited liability company prior to dissolution and a majority of the voting power of the members is a quorum at a meeting of the members.

Sec. 35. Minnesota Statutes 2014, section 322C.0408, subdivision 6, is amended to read:

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

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

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

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

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

(2) in all other cases, by the affirmative vote of the members, subject to section 322C.1204, subdivision 3, with each member having voting power in proportion to the member's interest in ~~then current profits~~ distributions of the limited liability company prior to dissolution, but the membership interests held by parties to the proceeding must not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or

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

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

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

member who is a member of the limited liability company, which committee shall report at least annually to the board of governors concerning its actions.

Sec. 36. Minnesota Statutes 2014, section 322C.0410, subdivision 2, is amended to read:

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

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

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

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

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

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

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

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

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

(4) Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

Sec. 37. Minnesota Statutes 2014, section 322C.0502, subdivision 4, is amended to read:

Subd. 4. **Evidence of interest.** A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate. Such an interest is not a security, as that term is defined in section 336.8-102, paragraph (a), clause (15), unless the conditions specified in section 336.8-103, paragraph (c), are satisfied.

Sec. 38. Minnesota Statutes 2014, section 322C.0902, is amended to read:

322C.0902 DERIVATIVE ACTION.

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

(1) the member first makes a demand on the other members in a member-managed limited liability company, the managers of a manager-managed limited liability company, or the board of governors of

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

a board-managed limited liability company requesting that they cause the company to bring an action to enforce the right, and the member, manager, or board does not bring the action within a reasonable time; or

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

Sec. 39. Minnesota Statutes 2014, section 322C.1001, subdivision 11, is amended to read:

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

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

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

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

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

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

(6) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it, in each case as provided or authorized by its governing statute.

Sec. 40. Minnesota Statutes 2014, section 322C.1001, subdivision 12, is amended to read:

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

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

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

Sec. 41. Minnesota Statutes 2014, section 322C.1007, is amended to read:

322C.1007 CONVERSION.

Subdivision 1. **Conversion requirements.** Pursuant to this section, sections 322C.1008 to 322C.1010, and a plan of conversion, an organization other than a limited liability company, a foreign limited liability company, a nonprofit corporation, or an organization owning assets irrevocably dedicated to a charitable purpose, may convert to a limited liability company other than a nonprofit limited liability company, and a limited liability company other than a nonprofit limited liability company may convert to an organization

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

other than a foreign limited liability company ~~pursuant to this section, sections 322C.1008 to 322C.1010, and a plan of conversion~~ if:

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

(2) the conversion is not prohibited by other law of this state or the law of the jurisdiction that enacted the other organization's governing statute ~~or other law of this state~~; and

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

Subd. 2. **Contents of plan of conversion.** A plan of conversion must be in a record and must include:

(1) the name and form of the organization and the jurisdiction of the organization's governing statute before conversion;

(2) the name and form of the organization and the jurisdiction of the organization's governing statute after conversion;

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

(4) the organizational documents of the converted organization that are, or are proposed to be, in a record.

Sec. 42. Minnesota Statutes 2014, section 322C.1009, is amended to read:

322C.1009 FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE AND TIME.

Subdivision 1. **Articles of conversion.** After a plan of conversion is approved:

(1) ~~a~~ if the converting organization is a converting limited liability company, the converting limited liability company shall file articles of conversion with the secretary of state, together with a total fee of $60, which articles of conversion must be signed as provided in section 322C.0203, subdivision 1, and must include:

(i) a statement that the limited liability company ~~has been converted~~ is converting into another organization;

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

(iii) the time the conversion is effective under the governing statute of the converted organization;

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

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

(vi) if the converted organization is a foreign organization not authorized to transact business in this state, the street address of an office that the secretary of state may use for the purposes of section 322C.1010, subdivision 3; and

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(2) if the converting organization is not a converting limited liability company, the ~~converting organization shall file with the secretary of state articles of organization, which must include, in addition to the information required by section 322C.0201, subdivision 2:~~ converting organization shall file articles of conversion with the secretary of state, together with a total fee of $60, which articles of conversion must be signed as provided in section 322C.0203, subdivision 1, and must include:

(i) articles of organization for the limited liability company into which the converting organization is converting, which articles of organization must include the information required by section 322C.0201, subdivision 2, clauses (1) and (2);

~~(i)~~ (ii) a statement that the ~~converted~~ converting organization ~~was converted from~~ is converting into a limited liability company from another organization;

~~(ii)~~ (iii) the name and form of ~~that~~ the converting organization and the jurisdiction of its governing statute; and

~~(iii)~~ (iv) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

Subd. 2. **Effective date and time of conversion.** A conversion becomes effective:

(1) if the converted organization is a limited liability company, when the articles of ~~organization takes effect~~ conversion are filed with the secretary of state or on a later date or later time specified in the articles of conversion; and

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

Subd. 3. **Certificate.** The secretary of state shall issue to the converted organization or its legal representative a certificate of conversion.

Sec. 43. Minnesota Statutes 2014, section 322C.1101, subdivision 5, is amended to read:

Subd. 5. **Management; provisions of chapter 317A applicable to nonprofit limited liability companies.** (a) A nonprofit limited liability company must be board-managed. The business and affairs of a nonprofit limited liability company must be managed by or under the direction of a board of governors, which will have such powers as are usually exercised by the board of directors of a nonprofit corporation governed by chapter 317A. All governors will be entitled to vote and have equal rights and preferences except as otherwise provided in the articles of organization or operating agreement. The members of the first board may be named in the articles of organization, designated, or appointed pursuant to the articles of organization, or elected by the organizer.

(b) A nonprofit limited liability company must have one or more natural persons acting as officers and exercising the functions of the offices of president and treasurer, however designated. The officers have such powers as are usually exercised by similar officers of a nonprofit corporation governed by chapter 317A. The board shall elect or appoint officers, except to the extent that the articles of organization or operating agreement provide that the members may elect or appoint officers.

(c) Section 317A.161, subdivision 11, applies to a nonprofit limited liability company as if it were a nonprofit corporation governed by chapter 317A. Section 317A.251 applies to a governor of a nonprofit

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

limited liability company as if the governor were a director of a nonprofit corporation, and section ~~322C.409~~ 322C.0409 does not apply.

(d) Section 317A.255 applies to, and with regard to, a governor of a nonprofit limited liability company as if the governor were a director of a nonprofit corporation.

(e) Section 317A.257 applies to a person who serves without compensation as a governor of a nonprofit limited liability company, manager, member, or agent of a nonprofit limited liability company as if such person were serving without compensation as a director, officer, member, or agent of a nonprofit corporation.

(f) Section 317A.671 regarding the diversion of certain assets applies to a nonprofit limited liability company as if it were a nonprofit corporation governed by chapter 317A.

(g) Section 317A.735 regarding the distribution of assets on dissolution applies to a nonprofit limited liability company as if it were a nonprofit corporation governed by chapter 317A.

(h) Section 317A.751 regarding judicial intervention applies to a nonprofit limited liability company as if it were a nonprofit corporation governed by chapter 317A.

Sec. 44. Minnesota Statutes 2014, section 322C.1204, subdivision 3, is amended to read:

Subd. 3. **Application to existing limited liability company.** For the purposes of applying this chapter to a limited liability company formed before August 1, 2015:

(1) the limited liability company's articles of organization under chapter 322B at the time the limited liability company becomes subject to this chapter are deemed to be the limited liability company's articles of organization; ~~and~~

(2) for the purposes of applying section 322C.0102, subdivision ~~10~~ 17, and subject to section 322C.0112, subdivision 4, the language in the articles of organization, and any bylaws, operating agreement, ~~and/or~~ or member control agreement of a limited liability company formed before August 1, 2015, that becomes subject to this chapter will operate as if that language were in the operating agreement of the limited liability company when it becomes subject to this chapter~~.~~; and

(3) subject to the operating agreement of the limited liability company:

(i) the limited liability company shall keep the records specified in section 322B.373, subdivision 1, clause (11), at the company's principal executive office, or at another place or places within the United States as determined under section 322B.373, subdivision 1, before the company became subject to this chapter;

(ii) for the purpose of applying item (i), section 322B.40, subdivisions 3 and 4, continue to apply to the limited liability company as if those provisions had not been repealed;

(iii) section 322C.0404, subdivision 1, does not apply to the limited liability company;

(iv) the profits and losses of the limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the records required by item (i);

(v) the voting power of each membership interest is in proportion to the value of the contributions of the members reflected in the records required by item (i);

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(vi) distributions of cash or other assets of the company, including distributions on termination of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the records required by item (i);

(vii) sections 322B.383, subdivisions 1, clause (1), 2, and 3, and 322B.386 continue to apply to the limited liability company as if those provisions had not been repealed; and

(viii) for the purpose of applying item (vii), section 322B.356, subdivision 1, continues to apply to the limited liability company as if that provision had not been repealed.

Sec. 45. **REPEALER.**

(a) Minnesota Statutes 2014, sections 302A.681; 302A.683; 302A.685; 302A.687; 302A.689; and 322B.78, are repealed.

(b) Laws 2014, chapter 157, article 2, sections 10; 11; 12; 13; 14; 15; 16; and 30, are repealed.

Presented to the governor May 14, 2015

Copyright © 2015 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.