

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE **S.F. No. 1104**

(SENATE AUTHORS: LATZ and Thompson)

| DATE | D-PG | OFFICIAL STATUS |
|------------|------|---|
| 04/07/2011 | 1235 | Introduction and first reading Referred to Judiciary and Public Safety |

A bill for an act

1.1 relating to business organizations; regulating the organization and operation of
1.2 limited liability companies; enacting a revised uniform limited liability company
1.3 act; providing conforming changes; amending Minnesota Statutes 2010, sections
1.4 48A.03, subdivision 4; 181.970, subdivision 2; 270C.721; 273.124, subdivision
1.5 8; 290.01, subdivision 3b; 302A.011, by adding subdivisions; 302A.115,
1.6 subdivision 1; 302A.681; 302A.683; 302A.685; 302A.689; 302A.691; 308A.121,
1.7 subdivision 1; 308B.801, subdivisions 1, 2, 5; 308B.805, subdivision 1;
1.8 308B.835, subdivision 2; 317A.115, subdivision 2; 319B.02, subdivisions 3, 22;
1.9 319B.10, subdivision 3; 321.0108; proposing coding for new law in Minnesota
1.10 Statutes, chapter 302A; proposing coding for new law as Minnesota Statutes,
1.11 chapter 322C; repealing Minnesota Statutes 2010, sections 302A.687; 322B.01;
1.12 322B.02; 322B.03, subdivisions 1, 2, 3, 6, 6a, 7, 8, 10, 11, 12, 13, 14, 15, 17,
1.13 17a, 17b, 18, 19, 19a, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 31a, 32, 33,
1.14 34, 35, 36, 36a, 37, 38, 39, 40, 41, 41a, 42, 43, 44, 45, 45a, 46, 47, 48, 49, 50, 51;
1.15 322B.04; 322B.10; 322B.105; 322B.11; 322B.115; 322B.12, subdivisions 1, 2,
1.16 3, 4, 5; 322B.125; 322B.13; 322B.135; 322B.14; 322B.145; 322B.15; 322B.155;
1.17 322B.16; 322B.165; 322B.17; 322B.175; 322B.18; 322B.20; 322B.21; 322B.22;
1.18 322B.23; 322B.30; 322B.303; 322B.306; 322B.31; 322B.313; 322B.316;
1.19 322B.32; 322B.323; 322B.326; 322B.33; 322B.333; 322B.336; 322B.34;
1.20 322B.343; 322B.346; 322B.348; 322B.35; 322B.353; 322B.356; 322B.36;
1.21 322B.363, subdivisions 1, 2, 3, 4, 5, 6, 7; 322B.366, subdivision 1; 322B.37;
1.22 322B.373; 322B.376; 322B.38; 322B.383; 322B.386; 322B.40; 322B.41;
1.23 322B.42; 322B.43; 322B.50; 322B.51; 322B.52; 322B.53; 322B.54; 322B.55;
1.24 322B.56; 322B.60; 322B.603; 322B.606; 322B.61; 322B.613; 322B.616;
1.25 322B.62; 322B.623; 322B.626; 322B.63; 322B.633; 322B.636; 322B.64;
1.26 322B.643; 322B.646; 322B.65; 322B.653; 322B.656; 322B.66; 322B.663;
1.27 322B.666; 322B.67; 322B.673; 322B.676; 322B.679; 322B.68; 322B.683;
1.28 322B.686; 322B.689; 322B.69; 322B.693; 322B.696; 322B.699; 322B.70;
1.29 322B.71; 322B.72; 322B.73; 322B.74; 322B.75; 322B.755; 322B.76; 322B.77;
1.30 322B.78; 322B.80; 322B.803; 322B.806; 322B.81; 322B.813; 322B.816,
1.31 subdivisions 1, 2, 4, 5, 6; 322B.82; 322B.823; 322B.826; 322B.83; 322B.833;
1.32 322B.836; 322B.84; 322B.843; 322B.846; 322B.85; 322B.853; 322B.856;
1.33 322B.86; 322B.863; 322B.866; 322B.87; 322B.873, subdivisions 1, 4; 322B.876,
1.34 subdivision 1; 322B.88; 322B.883; 322B.90; 322B.905; 322B.91, subdivisions
1.35 1, 2; 322B.915; 322B.92; 322B.925; 322B.93; 322B.935; 322B.94; 322B.945;
1.36 322B.95; 322B.955; 322B.960, subdivisions 1, 4, 5; 322B.975.

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

ARTICLE 1

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

GENERAL PROVISIONS

Section 1. [322C.0101] CITATION.

This chapter may be cited as the "Minnesota Revised Uniform Limited Liability Company Act."

Sec. 2. [322C.0102] DEFINITIONS.

Subdivision 1. **Application.** For purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Articles of organization.** "Articles of organization" means the articles of organization required by section 322C.0201. The term includes the articles of organization as amended or restated.

Subd. 3. **Board.** "Board" mean the board of governors, however designated, of a board-managed limited liability company.

Subd. 4. **Board-managed limited liability company.** "Board-managed limited liability company" means a limited liability company that qualifies as such under section 322C.0407, subdivision 1.

Subd. 5. **Contribution.** "Contribution" means any benefit provided by a person to a limited liability company:

(1) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(2) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(3) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

Subd. 6. **Debtor in bankruptcy.** "Debtor in bankruptcy" means a person that is the subject of:

(1) an order for relief under United States Code, title 12, or a successor statute of general application; or

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

Subd. 7. **Distribution.** "Distribution," except as otherwise provided in section 322C.0405, subdivision 7, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

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3.1 Subd. 8. **Effective.** "Effective," with respect to a record required or permitted
3.2 to be filed with the secretary of state under this chapter, means effective under section
3.3 322C.0205, subdivision 3.

3.4 Subd. 9. **Filed.** "Filed" or "filed with the secretary of state" means that a document
3.5 meeting the applicable requirements of this chapter, signed and accompanied by any
3.6 required filing fees, has been delivered to the secretary of state. The secretary of state shall
3.7 endorse on the original or an image thereof the word "Filed" and the month, day, and year
3.8 of filing, record the document or an image thereof in the Office of the Secretary of State,
3.9 and return a document or the image thereof to the person who delivered it for filing.

3.10 Subd. 10. **Foreign limited liability company.** "Foreign limited liability company"
3.11 means an unincorporated entity formed under the law of a jurisdiction other than this state
3.12 and denominated by that law as a limited liability company.

3.13 Subd. 11. **Governor.** "Governor" means a member of the board, however
3.14 designated, of a board-managed limited liability company.

3.15 Subd. 12. **Limited liability company.** "Limited liability company," except in the
3.16 phrase "foreign limited liability company," means an entity formed under this chapter.

3.17 Subd. 13. **Manager.** "Manager" means a person that under the operating agreement
3.18 of a manager-managed limited liability company is responsible, alone or in concert with
3.19 others, for performing the management functions stated in section 322C.0407, subdivision
3.20 3.

3.21 Subd. 14. **Manager-managed limited liability company.** "Manager-managed
3.22 limited liability company" means a limited liability company that qualifies as such under
3.23 section 322C.0407, subdivision 1.

3.24 Subd. 15. **Member.** "Member" means a person that has become a member of a
3.25 limited liability company under section 322C.0401 and has not dissociated under section
3.26 322C.0602.

3.27 Subd. 16. **Member-managed limited liability company.** "Member-managed
3.28 limited liability company" means a limited liability company that is not a
3.29 manager-managed limited liability company or a board-managed limited liability
3.30 company.

3.31 Subd. 17. **Operating agreement.** "Operating agreement" means the agreement,
3.32 whether or not referred to as an operating agreement and whether oral, in a record, implied,
3.33 or in any combination thereof, of all the members of a limited liability company, including
3.34 a sole member, concerning the matters described in section 322C.0110, subdivision 1. The
3.35 term includes the agreement as amended or restated.

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4.1 Subd. 18. **Organizer.** "Organizer" means a person that acts under section
4.2 322C.0201 to form a limited liability company.

4.3 Subd. 19. **Person.** "Person" means an individual, corporation, business trust, estate,
4.4 trust, partnership, limited liability company, association, joint venture, public corporation,
4.5 government or governmental subdivision, agency, or instrumentality, or any other legal or
4.6 commercial entity.

4.7 Subd. 20. **Principal office.** "Principal office" means the principal executive office
4.8 of a limited liability company or foreign limited liability company, whether or not the
4.9 office is located in this state.

4.10 Subd. 21. **Record.** "Record" means information that is inscribed on a tangible
4.11 medium or that is stored in an electronic or other medium and is retrievable in perceivable
4.12 form.

4.13 Subd. 22. **Recorded in the real property records.** "Recorded in the real property
4.14 records" means that a certified copy of a statement meeting the applicable requirements
4.15 of this chapter, including containing a legal description of the property affected by the
4.16 statement, as filed with the secretary of state, has been recorded in the office of the county
4.17 reorder in the county in which the real property affected by the statement is located or, if
4.18 the real property is registered under chapter 508 or 508A, has been recorded in the office of
4.19 the applicable registrar of titles and memorialized on the certificate of title for that property.

4.20 Subd. 23. **Registered office.** "Registered office" means:

4.21 (1) the office that a limited liability company is required to designate and maintain
4.22 under section 322C.0113; or

4.23 (2) the principal office of a foreign limited liability company.

4.24 Subd. 24. **Sign.** "Sign" means, with the present intent to authenticate or adopt
4.25 a record:

4.26 (1) to execute or adopt a tangible symbol; or

4.27 (2) to attach to or logically associate with the record an electronic symbol, sound,
4.28 or process.

4.29 Subd. 25. **State.** "State" means a state of the United States, the District of Columbia,
4.30 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject
4.31 to the jurisdiction of the United States.

4.32 Subd. 26. **Transfer.** "Transfer" includes an assignment, conveyance, deed, bill of
4.33 sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

4.34 Subd. 27. **Transferable interest.** "Transferable interest" means the right, as
4.35 originally associated with a person's capacity as a member, to receive distributions from a

5.1 limited liability company in accordance with the operating agreement, whether or not the
5.2 person remains a member or continues to own any part of the right.

5.3 Subd. 28. **Transferee.** "Transferee" means a person to which all or part of a
5.4 transferable interest has been transferred, whether or not the transferor is a member.

5.5 Sec. 3. **[322C.0103] KNOWLEDGE; NOTICE.**

5.6 Subdivision 1. **Knowledge of facts.** A person knows a fact when the person:

5.7 (1) has actual knowledge of it; or

5.8 (2) is deemed to know it under subdivision 4, clause (1), or law other than this
5.9 chapter.

5.10 Subd. 2. **Notice of facts.** A person has notice of a fact when the person:

5.11 (1) has reason to know the fact from all of the facts known to the person at the
5.12 time in question; or

5.13 (2) is deemed to have notice of the fact under subdivision 4, clause (2).

5.14 Subd. 3. **Notification of facts.** A person notifies another of a fact by taking steps
5.15 reasonably required to inform the other person in ordinary course, whether or not the
5.16 other person knows the fact.

5.17 Subd. 4. **Constructive notice.** A person that is not a member is deemed:

5.18 (1) to know of a limitation on authority to transfer real property as provided in
5.19 section 322C.0302, subdivision 7; and

5.20 (2) to have notice of a limited liability company's:

5.21 (i) dissolution, 90 days after a statement of dissolution under section 322C.0702,
5.22 subdivision 2, clause (2)(i), becomes effective;

5.23 (ii) termination, 90 days after a statement of termination under section 322C.0702,
5.24 subdivision 2, clause (2)(vi), becomes effective; and

5.25 (iii) merger, conversion, or domestication, 90 days after articles of merger,

5.26 conversion, or domestication under sections 322C.1001 to 322C.1015 become effective.

5.27 Sec. 4. **[322C.0104] NATURE, PURPOSE, AND DURATION OF LIMITED**
5.28 **LIABILITY COMPANY.**

5.29 Subdivision 1. **Separate entity.** A limited liability company is an entity distinct
5.30 from its members.

5.31 Subd. 2. **Permitted purposes.** A limited liability company may have any lawful
5.32 purpose, regardless of whether for profit.

5.33 Subd. 3. **Duration.** A limited liability company has perpetual duration.

6.1 Sec. 5. **[322C.0105] POWERS.**

6.2 Subdivision 1. Powers generally. Except as provided in subdivision 2, a limited
6.3 liability company has the capacity to sue and be sued in its own name and the power to do
6.4 all things necessary or convenient to carry on its activities.

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

6.7 (1) delivering to the secretary of state for filing a statement of change under section
6.8 322C.0114, an amendment to the certificate under section 322C.0202, a statement of
6.9 correction under section 322C.0206, an annual report under section 322C.0208, and a
6.10 statement of termination under section 322C.0702;

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

6.12 (3) dissolving under section 322C.0701.

6.13 Subd. 3. Ratification. A limited liability company that has or has had at least one
6.14 member may ratify an act or activity that occurred when the company lacked capacity
6.15 under subdivision 2.

6.16 Sec. 6. **[322C.0106] GOVERNING LAW.**

6.17 The law of this state governs:

6.18 (1) the internal affairs of a limited liability company; and

6.19 (2) the liability of a member as member, a manager as manager, and a governor as
6.20 governor, for the debts, obligations, or other liabilities of a limited liability company.

6.21 Sec. 7. **[322C.0107] SUPPLEMENTAL PRINCIPLES OF LAW.**

6.22 Unless displaced by particular provisions of this chapter, the principles of law and
6.23 equity supplement this chapter.

6.24 Sec. 8. **[322C.0108] LIMITED LIABILITY COMPANY NAME.**

6.25 Subdivision 1. Requirements and prohibitions. The limited liability company
6.26 name must:

6.27 (1) be in the English language or in any other language expressed in English letters
6.28 or characters;

6.29 (2) contain the words "limited liability company," or must contain the abbreviation
6.30 "LLC" or, in the case of a limited liability company that is a professional firm subject to
6.31 chapter 319B, must meet the requirements of section 319B.05 applicable to a limited
6.32 liability company;

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7.1 (3) not contain the word "corporation" or "incorporated" and must not contain the
7.2 abbreviation of either or both of these words;

7.3 (4) not contain a word or phrase that indicates or implies that it is organized for a
7.4 purpose other than a permitted purpose; and

7.5 (5) be distinguishable upon the records in the Office of the Secretary of State
7.6 from the name of each domestic limited liability company, limited liability partnership,
7.7 corporation, and limited partnership, whether profit or nonprofit, and each foreign limited
7.8 liability company, limited liability partnership, corporation, and limited partnership on
7.9 file, authorized or registered to do business in this state at the time of filing, whether profit
7.10 or nonprofit, and each name the right to which is, at the time of organization, reserved as
7.11 provided for in sections 5.35, 302A.117, 317A.117, 321.0109, 322B.125, or 333.001 to
7.12 333.54, unless there is filed with the articles of organization one of the following:

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

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

7.21 (iii) the applicant's affidavit that the domestic or foreign limited liability company,
7.22 domestic or foreign corporation, or domestic or foreign limited partnership with the
7.23 name that is not distinguishable has been organized, incorporated, or on file in this
7.24 state for at least three years prior to the affidavit, if it is a domestic limited liability
7.25 company, corporation, or limited partnership, or has been authorized or registered to
7.26 do business in this state for at least three years prior to the affidavit, if it is a foreign
7.27 limited liability company, corporation, or limited partnership, or that the holder of a name
7.28 filed or registered with the secretary of state under sections 333.001 to 333.54 filed
7.29 or registered that name at least three years prior to the affidavit, that the domestic or
7.30 foreign limited liability company, domestic or foreign corporation, or domestic or foreign
7.31 limited partnership or holder has not during the three-year period before the affidavit filed
7.32 any document with the secretary of state; that the applicant has mailed written notice
7.33 to the domestic or foreign limited liability company, domestic or foreign corporation,
7.34 or domestic or foreign limited partnership or the holder of a name filed or registered
7.35 with the secretary of state under sections 333.001 to 333.54 by certified mail, return
7.36 receipt requested, properly addressed to the registered office of the domestic or foreign

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8.1 limited liability company or domestic or foreign corporation or in care of the agent of the
8.2 domestic or foreign limited partnership, or the address of the holder of a name filed or
8.3 registered with the secretary of state under sections 333.001 to 333.54, shown in the
8.4 records of the secretary of state, stating that the applicant intends to use a name that is
8.5 not distinguishable and the notice has been returned to the applicant as undeliverable to
8.6 the addressee of the domestic or foreign limited liability company, domestic or foreign
8.7 corporation, or domestic or foreign limited partnership or holder of a name filed or
8.8 registered with the secretary of state under sections 333.001 to 333.54; that the applicant,
8.9 after diligent inquiry, has been unable to find any telephone listing for the domestic or
8.10 foreign limited liability company, domestic or foreign corporation, or domestic or foreign
8.11 limited partnership with the name that is not distinguishable in the county in which is
8.12 located the registered office of the domestic or foreign limited liability company, domestic
8.13 or foreign corporation, or domestic or foreign limited partnership shown in the records of
8.14 the secretary of state or has been unable to find any telephone listing for the holder of a
8.15 name filed or registered with the secretary of state under sections 333.001 to 333.54
8.16 in the county in which is located the address of the holder shown in the records of the
8.17 secretary of state; and that the applicant has no knowledge that the domestic or foreign
8.18 limited liability company, domestic or foreign corporation, or domestic or foreign limited
8.19 partnership or holder of a name filed or registered with the secretary of state under sections
8.20 333.001 to 333.54 is currently engaged in business in this state.

8.21 Subd. 2. **Determination.** The secretary of state shall determine whether a name is
8.22 "distinguishable" from another name for purposes of this section and section 322B.125.

8.23 Subd. 3. **Other laws affecting use of names.** This section and section 322B.125
8.24 do not abrogate or limit the law of unfair competition or unfair practices, or sections
8.25 333.001 to 333.54, or the laws of the United States with respect to the right to acquire
8.26 and protect copyrights, trade names, trademarks, service names, service marks, or any
8.27 other rights to the exclusive use of names or symbols, or derogate the common law or
8.28 the principles of equity.

8.29 Subd. 4. **Use of name by surviving or successor organization.** A limited
8.30 liability company that is the surviving organization in a merger with one or more other
8.31 organizations, or that is the continuation of an organization following a conversion, or
8.32 that is organized by the reorganization of one or more organizations, or that acquires by
8.33 sale, lease, or other disposition to or exchange with an organization all or substantially
8.34 all of the assets of another organization, including its name, may have the same name as
8.35 that used in this state by any of the other organizations, if the other organization whose

9.1 name is sought to be used was organized under the laws of, or is authorized to transact
9.2 business in, this state.

9.3 Subd. 5. **Injunction.** The use of a name by a limited liability company in violation
9.4 of this section does not affect or vitiate its limited liability company existence, but a court
9.5 in this state may, upon application of the state or of a person interested or affected, enjoin
9.6 the limited liability company from doing business under a name assumed in violation of
9.7 this section, although its articles of organization may have been filed with the secretary of
9.8 state and articles of organization issued.

9.9 Sec. 9. **[322C.0109] RESERVED NAME.**

9.10 Subdivision 1. **Procedure.** A person may reserve the exclusive use of the name of
9.11 a limited liability company, including an alternate name for a foreign limited liability
9.12 company, by filing an application with the secretary of state. The application must state
9.13 the name and address of the applicant and the name proposed to be reserved. If the
9.14 secretary of state finds that the name applied for is available, it must be reserved for the
9.15 applicant's exclusive use for a one-year period.

9.16 Subd. 2. **Transfer.** The owner of a name reserved for a limited liability company
9.17 may transfer the reservation to another person by filing with the secretary of state for filing
9.18 a signed notice of the transfer which states the name and address of the transferee.

9.19 Sec. 10. **[322C.0110] OPERATING AGREEMENT; SCOPE, FUNCTION, AND**
9.20 **LIMITATIONS.**

9.21 Subdivision 1. **Operating agreement.** Except as otherwise provided in subdivisions
9.22 2 and 3, the operating agreement governs:

9.23 (1) relations among the members as members and between the members and the
9.24 limited liability company;

9.25 (2) the rights and duties under this chapter of a person in the capacity of manager or
9.26 governor;

9.27 (3) the activities of the company and the conduct of those activities; and

9.28 (4) the means and conditions for amending the operating agreement.

9.29 Subd. 2. **Default rules supplementing operating agreement.** To the extent the
9.30 operating agreement does not otherwise provide for a matter described in subdivision 1,
9.31 this chapter governs the matter.

9.32 Subd. 3. **Restrictions.** An operating agreement may not:

9.33 (1) vary a limited liability company's capacity under section 322C.0105 to sue and
9.34 be sued in its own name;

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10.1 (2) vary the law applicable under section 322C.0106;
10.2 (3) vary the power of the court under section 322C.0204;
10.3 (4) subject to subdivisions 4 to 7, eliminate the duty of loyalty, the duty of care, or
10.4 any other fiduciary duty;

10.5 (5) subject to subdivisions 4 to 7, eliminate the contractual obligation of good faith
10.6 and fair dealing under section 322C.0409, subdivision 4;

10.7 (6) unreasonably restrict the duties and rights stated in section 322C.0410;

10.8 (7) vary the power of a court to decree dissolution in the circumstances specified
10.9 in section 322C.0701, subdivision 1, clauses (4) and (5);

10.10 (8) vary the requirement to wind up a limited liability company's business as
10.11 specified in section 322C.0702, subdivisions 1 and 2, clause (1);

10.12 (9) unreasonably restrict the right of a member to maintain an action under sections
10.13 322C.0901 to 322C.0906;

10.14 (10) restrict the right to approve a merger, conversion, or domestication under
10.15 section 322C.1015 to a member that will have personal liability with respect to a surviving,
10.16 converted, or domesticated organization; or

10.17 (11) except as otherwise provided in section 322C.0112, subdivision 2, restrict the
10.18 rights under this chapter of a person other than a member, manager, or governor.

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

10.22 (1) restrict or eliminate the duty:

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

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

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

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

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

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

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

11.7 **Subd. 5. Duty of loyalty, authorization and ratification of otherwise violative**
11.8 **conduct.** The operating agreement may specify the method by which a specific act or
11.9 transaction that would otherwise violate the duty of loyalty may be authorized or ratified by
11.10 one or more disinterested and independent persons after full disclosure of all material facts.

11.11 **Subd. 6. Eliminating fiduciary duty when responsibility eliminated.** To the
11.12 extent the operating agreement of a member-managed limited liability company expressly
11.13 relieves a member of a responsibility that the member would otherwise have under this
11.14 chapter and imposes the responsibility on one or more other members, the operating
11.15 agreement may, to the benefit of the member that the operating agreement relieves of the
11.16 responsibility, also eliminate or limit any fiduciary duty that would have pertained to
11.17 the responsibility.

11.18 **Subd. 7. Indemnification and exculpation.** The operating agreement may alter or
11.19 eliminate the indemnification for a member, manager, or governor provided by section
11.20 322C.0408, subdivision 1, and may eliminate or limit a member's, manager's, or governor's
11.21 liability to the limited liability company and members for money damages, except for:

11.22 (1) breach of the duty of loyalty;

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

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

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

11.27 (5) an intentional violation of criminal law.

11.28 **Subd. 8. Determining whether term is manifestly unreasonable.** The court shall
11.29 decide any claim under subdivision 4 that a term of an operating agreement is manifestly
11.30 unreasonable. The court:

11.31 (1) shall make its determination as of the time the challenged term became part of
11.32 the operating agreement and by considering only circumstances existing at that time; and

11.33 (2) may invalidate the term only if, in light of the purposes and activities of the
11.34 limited liability company, it is readily apparent that:

11.35 (i) the objective of the term is unreasonable; or

11.36 (ii) the term is an unreasonable means to achieve the provision's objective.

12.1 Sec. 11. **[322C.0111] OPERATING AGREEMENT; EFFECT ON LIMITED**
12.2 **LIABILITY COMPANY AND PERSONS BECOMING MEMBERS;**
12.3 **PREFORMATION AGREEMENT.**

12.4 Subdivision 1. **Company's assent not required.** A limited liability company is
12.5 bound by and may enforce the operating agreement, whether or not the company has itself
12.6 manifested assent to the operating agreement.

12.7 Subd. 2. **Deemed assent by all members.** A person that becomes a member of a
12.8 limited liability company is deemed to assent to the operating agreement.

12.9 Subd. 3. **Preformation agreement.** Two or more persons intending to become the
12.10 initial members of a limited liability company may make an agreement providing that
12.11 upon the formation of the company the agreement will become the operating agreement.
12.12 One person intending to become the initial member of a limited liability company may
12.13 assent to terms providing that upon the formation of the company the terms will become
12.14 the operating agreement.

12.15 Sec. 12. **[322C.0112] OPERATING AGREEMENT; EFFECT ON THIRD**
12.16 **PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF**
12.17 **LIMITED LIABILITY COMPANY.**

12.18 Subdivision 1. **Approval of third party.** An operating agreement may specify
12.19 that its amendment requires the approval of a person that is not a party to the operating
12.20 agreement or the satisfaction of a condition. An amendment is ineffective if its adoption
12.21 does not include the required approval or satisfy the specified condition.

12.22 Subd. 2. **Transferees and dissociated members.** The obligations of a limited
12.23 liability company and its members to a person in the person's capacity as a transferee or
12.24 dissociated member are governed by the operating agreement. Subject only to any court
12.25 order issued under section 322C.0503, subdivision 2, clause (2), to effectuate a charging
12.26 order, an amendment to the operating agreement made after a person becomes a transferee
12.27 or dissociated member is effective with regard to any debt, obligation, or other liability of
12.28 the limited liability company or its members to the person in the person's capacity as a
12.29 transferee or dissociated member.

12.30 Subd. 3. **Ineffective provisions.** If a record that has been delivered by a limited
12.31 liability company to the secretary of state for filing and has become effective under
12.32 this chapter contains a provision that would be ineffective under section 322C.0110,
12.33 subdivision 3, if contained in the operating agreement, the provision is likewise ineffective
12.34 in the record.

13.1 Subd. 4. **Conflicting provisions.** Subject to subdivision 3, if a record that has been
13.2 delivered by a limited liability company to the secretary of state for filing and has become
13.3 effective under this chapter conflicts with a provision of the operating agreement:

13.4 (1) the operating agreement prevails as to members, dissociated members,
13.5 transferees, managers, and governors; and

13.6 (2) the record prevails as to other persons to the extent they reasonably rely on
13.7 the record.

13.8 Sec. 13. **[322C.0113] OFFICE AND AGENT FOR SERVICE OF PROCESS.**

13.9 Every limited liability company shall have a registered office and may have a
13.10 registered agent, in the manner prescribed by section 5.36.

13.11 Sec. 14. **[322C.0114] CHANGE OF REGISTERED OFFICE OR AGENT FOR**
13.12 **SERVICE OF PROCESS.**

13.13 Every limited liability company may change its registered office or change its
13.14 registered agent, and the agent may resign or change its business address or name, in the
13.15 manner prescribed by section 5.36.

13.16 Sec. 15. **[322C.0115] RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

13.17 Every limited liability company registered agent may resign in the manner
13.18 prescribed by section 5.36.

13.19 Sec. 16. **[322C.0116] SERVICE OF PROCESS ON LIMITED LIABILITY**
13.20 **COMPANY.**

13.21 Subdivision 1. **Agent.** An agent for service of process appointed by a limited liability
13.22 company or foreign limited liability company is an agent of the company for service of
13.23 any process, notice, or demand required or permitted by law to be served on the company.

13.24 Subd. 2. **Secretary of state.** If a limited liability company or foreign limited
13.25 liability company does not appoint or maintain an agent for service of process in this
13.26 state or the agent for service of process cannot with reasonable diligence be found at
13.27 the agent's street address, the secretary of state is an agent of the company upon whom
13.28 process, notice, or demand may be served.

13.29 Subd. 3. **Record of service.** A process, notice, or demand required or permitted by
13.30 law to be served upon a company may be served upon the secretary of state as provided
13.31 in section 5.25.

14.1 Subd. 4. **Other law not affected.** This section does not affect the right to serve
14.2 process, notice, or demand in any other manner provided by law.

14.3 Sec. 17. **[322C.0117] LEGAL RECOGNITION OF ELECTRONIC RECORDS**
14.4 **AND SIGNATURES.**

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

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

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

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

14.14 Subd. 2. **Electronic records and signatures.** For purposes of this chapter:

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

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

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

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

14.23 **FORMATION; ARTICLES OF ORGANIZATION AND OTHER FILINGS**

14.24 Sec. 18. **[322C.0201] FORMATION OF LIMITED LIABILITY COMPANY;**
14.25 **ARTICLES OF ORGANIZATION.**

14.26 Subdivision 1. **Organizers.** One or more persons may act as organizers to form
14.27 a limited liability company by signing and filing with the secretary of state articles of
14.28 organization.

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

14.31 (1) the name of the limited liability company, which must comply with section
14.32 322C.0108;

14.33 (2) the street address of the initial registered office and the name and street address
14.34 of the initial agent for service of process of the company; and

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

15.2 Subd. 3. **Optional contents of articles of organization.** Subject to section
15.3 322C.0112, subdivision 3, articles of organization may also contain statements as to
15.4 matters other than those required by subdivision 2. However, a statement in articles of
15.5 organization is not effective as a statement of authority.

15.6 Subd. 4. **Formation.** (a) A limited liability company is formed when articles of
15.7 organization have been filed with the secretary of state.

15.8 (b) Except in a proceeding by this state to dissolve a limited liability company, the
15.9 filing of the articles of organization by the secretary of state is conclusive proof that the
15.10 organizer satisfied all conditions to the formation of a limited liability company.

15.11 (c) The formation of a limited liability company does not by itself cause any person
15.12 to become a member. However, this chapter does not preclude an agreement, made before
15.13 or after formation of a limited liability company, which provides that one or more persons
15.14 will become members, or acknowledging that one or more persons became members, upon
15.15 or otherwise in connection with the formation of the limited liability company.

15.16 Sec. 19. **[322C.0202] AMENDMENT OR RESTATEMENT OF ARTICLES OF**
15.17 **ORGANIZATION.**

15.18 Subdivision 1. **Timing of amendment.** Articles of organization may be amended or
15.19 restated at any time.

15.20 Subd. 2. **Amendment procedure.** To amend its articles of organization, a limited
15.21 liability company must file with the secretary of state an amendment stating:

15.22 (1) the name of the company;

15.23 (2) the changes the amendment makes to the articles of organization as most recently
15.24 amended or restated; and

15.25 (3) a statement that the amendment was adopted pursuant to this chapter.

15.26 Subd. 3. **Restatement.** To restate its articles of organization, a limited liability
15.27 company must file with the secretary of state a restatement, designated as such in its
15.28 heading, stating:

15.29 (1) in the heading or an introductory paragraph, the company's present name; and

15.30 (2) the changes the restatement makes to the articles of organization as most recently
15.31 amended or restated.

15.32 Subd. 4. **Date of effectuation.** Subject to sections 322C.0112, subdivision 3, and
15.33 322C.0205, subdivision 3, an amendment to or restatement of articles of organization is
15.34 effective when filed with the secretary of state.

16.1 Subd. 5. **Inaccurate information.** If a member of a member-managed limited
16.2 liability company, a manager of a manager-managed limited liability company, or a
16.3 governor of a board-managed limited liability company, knows that any information in
16.4 articles of organization filed with the secretary of state was inaccurate when the articles
16.5 were filed or has become inaccurate owing to changed circumstances, the member,
16.6 manager, or governor shall promptly:

16.7 (1) cause the articles to be amended; or

16.8 (2) if appropriate, file with the secretary of state a change of registered office under
16.9 section 322C.0114.

16.10 Sec. 20. **[322C.0203] SIGNING OF RECORDS TO BE FILED WITH**
16.11 **SECRETARY OF STATE.**

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

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

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

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

16.20 (4) A record filed on behalf of a dissolved limited liability company that has no
16.21 members must be signed by the person winding up the company's activities under section
16.22 322C.0702, subdivision 3, or a person appointed under section 322C.0702, subdivision 4,
16.23 to wind up those activities.

16.24 (5) A statement of cancellation under section 322C.0201, subdivision 4, clause
16.25 (2), must be signed by each organizer that signed the initial articles of organization, but
16.26 a personal representative of a deceased or incompetent organizer may sign in the place
16.27 of the decedent or incompetent.

16.28 (6) A statement of denial by a person under section 322C.0303 must be signed
16.29 by that person.

16.30 (7) Any other record must be signed by the person on whose behalf the record is
16.31 filed with the secretary of state.

16.32 Subd. 2. **Signing by agent.** Any record filed under this chapter may be signed by an
16.33 agent pursuant to section 5.15.

17.1 Sec. 21. **[322C.0204] SIGNING AND FILING PURSUANT TO JUDICIAL**
17.2 **ORDER.**

17.3 Subdivision 1. **Process.** If a person required by this chapter to sign a record or file
17.4 a record with the secretary of state does not do so, any other person that is aggrieved
17.5 may petition the appropriate court to order:

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

17.9 Subd. 2. **Joinder of limited liability company.** If a petitioner under subdivision
17.10 1 is not the limited liability company or foreign limited liability company to which the
17.11 record pertains, the petitioner shall make the company a party to the action.

17.12 Sec. 22. **[322C.0205] FILING OF RECORDS WITH SECRETARY OF STATE;**
17.13 **EFFECTIVE TIME AND DATE.**

17.14 Subdivision 1. **Delivery requirements.** A record authorized or required to be filed
17.15 with the secretary of state under this chapter must be captioned to describe the record's
17.16 purpose, be in a medium permitted by the secretary of state, and be delivered to the
17.17 secretary of state. If the filing fees have been paid, unless the secretary of state determines
17.18 that a record does not comply with the filing requirements of this chapter, the secretary
17.19 of state shall file the record and:

17.20 (1) for a statement of denial under section 322C.0303, send an image of the filed
17.21 statement and a receipt for the fees to the person on whose behalf the statement was
17.22 delivered for filing and to the limited liability company; and

17.23 (2) for all other records, send a copy of the filed record and a receipt for the fees to
17.24 the person on whose behalf the record was filed.

17.25 Subd. 2. **Certified copy to requester.** Upon request and payment of the requisite
17.26 fee, the secretary of state shall send to the requester a certified copy of a requested record.

17.27 Subd. 3. **Effective date and time.** Except as otherwise provided in sections
17.28 322C.0115, 322C.0201, subdivision 4, paragraph (a), and 322C.0206, a record filed with
17.29 the secretary of state under this chapter may specify an effective time and a delayed
17.30 effective date. Subject to sections 322C.0115, 322C.0201, subdivision 4, paragraph (a),
17.31 and 322C.0206, a record filed with the secretary of state is effective:

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

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

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

18.5 (i) the specified date; or

18.6 (ii) the 90th day after the record is filed; or

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

18.9 (i) the specified date; or

18.10 (ii) the 90th day after the record is filed.

18.11 Sec. 23. **[322C.0206] LIABILITY FOR INACCURATE INFORMATION IN**
18.12 **FILED RECORD.**

18.13 Subdivision 1. **Persons liable.** If a record filed with the secretary of state under this
18.14 chapter contains inaccurate information, a person that suffers a loss by reliance on the
18.15 information may recover damages for the loss from:

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

18.18 (2) subject to subdivision 2, a member of a member-managed limited liability
18.19 company or the manager of a manager-managed limited liability company, if:

18.20 (i) the record was filed with the secretary of state on behalf of the company; and

18.21 (ii) the member or manager had notice of the inaccuracy for a reasonably sufficient
18.22 time before the information was relied upon so that, before the reliance, the member or
18.23 manager reasonably could have:

18.24 (A) effected an amendment under section 322C.0202;

18.25 (B) filed a petition under section 322C.0204; or

18.26 (C) filed with the secretary of state a statement of change under section 322C.0114
18.27 or a statement of correction under section 322C.0206.

18.28 Subd. 2. **Excepted members.** To the extent that the operating agreement of a
18.29 member-managed limited liability company expressly relieves a member of responsibility
18.30 for maintaining the accuracy of information contained in records filed with the secretary
18.31 of state under this chapter and imposes that responsibility on one or more other members,
18.32 the liability stated in subdivision 1, clause (2), applies to those other members and not to
18.33 the member that the operating agreement relieves of the responsibility.

19.1 Subd. 3. **Penalty of perjury.** An individual who signs a record authorized or
19.2 required to be filed under this chapter affirms under penalty of perjury that the information
19.3 stated in the record is accurate.

19.4 Sec. 24. **[322C.0207] CERTIFICATE OF EXISTENCE OR AUTHORIZATION.**

19.5 The secretary of state, upon request and payment of the requisite fee, shall furnish to
19.6 any person a certificate of existence for a limited liability company pursuant to section
19.7 5.12.

19.8 Sec. 25. **[322C.0208] ANNUAL REPORT FOR SECRETARY OF STATE.**

19.9 (a) The secretary of state may send annually to each limited liability company,
19.10 using the information provided by the limited liability company and foreign limited
19.11 liability company pursuant to section 5.002 or 5.34 or the articles of organization, a notice
19.12 announcing the need to file the annual renewal and informing the limited liability company
19.13 that the annual renewal may be filed online and that paper filings may also be made, and
19.14 informing the limited liability company that failing to file the annual renewal will result
19.15 in an administrative termination of the limited liability company or the revocation of
19.16 the authority of the limited liability company and foreign limited liability company to
19.17 do business in Minnesota.

19.18 (b) Each calendar year beginning in the calendar year following the calendar year in
19.19 which a limited liability company and foreign limited liability company files articles of
19.20 organization, a limited liability company and foreign limited liability company must file
19.21 with the secretary of state by December 31 of each calendar year a renewal containing the
19.22 items required by section 5.34.

19.23 **RELATIONS OF MEMBERS, MANAGERS, AND GOVERNORS TO PERSONS**
19.24 **DEALING WITH LIMITED LIABILITY COMPANY**

19.25 Sec. 26. **[322C.0301] NO AGENCY POWER OF MEMBER AS MEMBER.**

19.26 Subdivision 1. **No automatic agency.** A member is not an agent of a limited liability
19.27 company solely by reason of being a member.

19.28 Subd. 2. **Other law not affected.** A person's status as a member does not prevent or
19.29 restrict law other than this chapter from imposing liability on a limited liability company
19.30 because of the person's conduct.

19.31 Sec. 27. **[322C.0302] STATEMENT OF AUTHORITY.**

20.1 Subdivision 1. **Filing of statement with secretary of state; contents.** A limited
20.2 liability company may file with the secretary of state a statement of authority. The
20.3 statement:

20.4 (1) must include the name of the company and the street address of its registered
20.5 office;

20.6 (2) with respect to any position that exists in or with respect to the company, may
20.7 state the authority, or limitations on the authority, of all persons holding the position to:

20.8 (i) execute an instrument transferring real property held in the name of the company;

20.9 or

20.10 (ii) enter into other transactions on behalf of, or otherwise act for or bind, the
20.11 company; and

20.12 (3) may state the authority, or limitations on the authority, of a specific person to:

20.13 (i) execute an instrument transferring real property held in the name of the company;

20.14 or

20.15 (ii) enter into other transactions on behalf of, or otherwise act for or bind, the
20.16 company.

20.17 Subd. 2. **Amendment or cancellation of statement.** To amend or cancel
20.18 a statement of authority filed with the secretary of state under section 322C.0205,
20.19 subdivision 1, a limited liability company must file with the secretary of state an
20.20 amendment or cancellation stating:

20.21 (1) the name of the company;

20.22 (2) the street address of the company's registered office;

20.23 (3) the caption of the statement being amended or canceled and the date the
20.24 statement being affected became effective; and

20.25 (4) the contents of the amendment or a declaration that the statement being affected
20.26 is canceled.

20.27 Subd. 3. **Statements effective only as to nonmembers.** A statement of authority
20.28 affects only the power of a person to bind a limited liability company to persons that are
20.29 not members.

20.30 Subd. 4. **Limitations of authority.** Subject to subdivision 3 and section 322C.0103,
20.31 subdivision 4, and except as otherwise provided in subdivisions 6, 7, and 8, a limitation on
20.32 the authority of a person or a position contained in an effective statement of authority is
20.33 not by itself evidence of knowledge or notice of the limitation by any person.

20.34 Subd. 5. **Authority to transfer property other than real property.** Subject to
20.35 subdivision 3, a grant of authority not pertaining to transfers of real property and contained

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21.1 in an effective statement of authority is conclusive in favor of a person that gives value in
21.2 reliance on the grant, except to the extent that when the person gives value:

- 21.3 (1) the person has knowledge to the contrary;
21.4 (2) the statement has been canceled or restrictively amended under subdivision 2; or
21.5 (3) a limitation on the grant is contained in another statement of authority that
21.6 became effective after the statement containing the grant became effective.

21.7 Subd. 6. **Authority to transfer real property.** Subject to subdivision 3, an
21.8 effective statement of authority that grants authority to transfer real property held in the
21.9 name of the limited liability company, whether or not a certified copy of the statement is
21.10 recorded in the real property records, is conclusive in favor of a person that gives value in
21.11 reliance on the grant without knowledge to the contrary, except to the extent that when
21.12 the person gives value:

21.13 (1) the statement has been canceled or restrictively amended under subdivision 2
21.14 and a certified copy of the cancellation or restrictive amendment has been recorded in the
21.15 real property records; or

21.16 (2) a limitation on the grant is contained in another statement of authority that
21.17 became effective after the statement containing the grant became effective and a certified
21.18 copy of the later-effective statement is recorded in the real property records.

21.19 Subd. 7. **Recording; constructive notice regarding real property.** Subject to
21.20 subdivision 3, if a certified copy of an effective statement containing a limitation on
21.21 the authority to transfer real property held in the name of a limited liability company is
21.22 recorded in the real property records, all persons are deemed to know of the limitation.

21.23 Subd. 8. **Statements of dissolution or termination.** Subject to subdivision 9, an
21.24 effective statement of dissolution or termination is a cancellation of any filed statement
21.25 of authority for the purposes of subdivision 6 and is a limitation on authority for the
21.26 purposes of subdivision 7.

21.27 Subd. 9. **Postdissolution statements.** After a statement of dissolution becomes
21.28 effective, a limited liability company may file with the secretary of state and, if
21.29 appropriate, may record in the real property records, a statement of authority that is
21.30 designated as a postdissolution statement of authority. The statement operates as provided
21.31 in subdivisions 6 and 7.

21.32 Subd. 10. **Statement of denial.** An effective statement of denial operates as a
21.33 restrictive amendment under this section and may be recorded by certified copy in the real
21.34 property records for the purposes of subdivision 6, clause (1).

21.35 Sec. 28. **[322C.0303] STATEMENT OF DENIAL.**

22.1 A person named in a filed statement of authority granting that person authority may
22.2 file with the secretary of state for filing a statement of denial that:

22.3 (1) provides the name of the limited liability company and the caption of the
22.4 statement of authority to which the statement of denial pertains; and

22.5 (2) denies the grant of authority.

22.6 Sec. 29. **[322C.0304] LIABILITY OF MEMBERS, MANAGERS, AND**
22.7 **GOVERNORS.**

22.8 Subdivision 1. **Liability shield for members.** The debts, obligations, or other
22.9 liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

22.10 (1) are solely the debts, obligations, or other liabilities of the company; and

22.11 (2) do not become the debts, obligations, or other liabilities of a member, manager,
22.12 or governor solely by reason of the member acting as a member, manager acting as a
22.13 manager, or governor acting as a governor.

22.14 Subd. 2. **Effect of lack of formalities.** The failure of a limited liability company to
22.15 observe any particular formalities relating to the exercise of its powers or management of
22.16 its activities is not a ground for imposing liability on the members, managers, or governors
22.17 for the debts, obligations, or other liabilities of the company.

22.18 Subd. 3. **Piercing the veil.** Except as relates to the failure of a limited liability
22.19 company to observe any particular formalities relating to the exercise of its powers or
22.20 management of its activities, the case law that states the conditions and circumstances
22.21 under which the corporate veil of a corporation may be pierced under Minnesota law
22.22 also applies to limited liability companies.

22.23 **RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED**
22.24 **LIABILITY COMPANY**

22.25 Sec. 30. **[322C.0401] BECOMING A MEMBER.**

22.26 Subdivision 1. **One initial member.** If a limited liability company is to have only
22.27 one member upon formation, the person becomes a member as agreed by that person and
22.28 the organizer of the company. That person and the organizer may be, but need not be,
22.29 different persons. If different, the organizer acts on behalf of the initial member.

22.30 Subd. 2. **Multiple initial members.** If a limited liability company is to have more
22.31 than one member upon formation, those persons become members as agreed by the
22.32 persons before the formation of the company. The organizer acts on behalf of the persons
22.33 in forming the company and may be, but need not be, one of the persons.

23.1 Subd. 3. **Shelf limited liability company.** If a limited liability company is to have
23.2 no members upon formation, a person becomes an initial member of the limited liability
23.3 company with the consent of a majority of the organizers. The organizers may consent to
23.4 more than one person simultaneously becoming the company's initial members.

23.5 Subd. 4. **Subsequent members.** After a limited liability company has or has had at
23.6 least one member, a person becomes a member:

23.7 (1) as provided in the operating agreement;

23.8 (2) as the result of a transaction effective under sections 322C.1001 to 322C.1015;

23.9 (3) with the consent of all the members; or

23.10 (4) if, within 90 consecutive days after the company ceases to have any members:

23.11 (i) the last person to have been a member, or the legal representative of that person,
23.12 designates a person to become a member; and

23.13 (ii) the designated person consents to become a member.

23.14 Subd. 5. **Neither transferable interest nor contribution required.** A person may
23.15 become a member without acquiring a transferable interest and without making or being
23.16 obligated to make a contribution to the limited liability company.

23.17 Sec. 31. **[322C.0402] FORM OF CONTRIBUTION.**

23.18 A contribution may consist of tangible or intangible property or other benefit to a
23.19 limited liability company, including money, services performed, promissory notes, other
23.20 agreements to contribute money or property, and contracts for services to be performed.

23.21 Sec. 32. **[322C.0403] LIABILITY FOR CONTRIBUTIONS.**

23.22 Subdivision 1. **Impracticability no excuse.** A person's obligation to make a
23.23 contribution to a limited liability company is not excused by the person's death, disability,
23.24 or other inability to perform personally. If a person does not make a required contribution,
23.25 the person or the person's estate is obligated to contribute money equal to the value of the
23.26 part of the contribution which has not been made, at the option of the company.

23.27 Subd. 2. **Creditor enforcement.** A creditor of a limited liability company which
23.28 extends credit or otherwise acts in reliance on an obligation described in subdivision 1
23.29 may enforce the obligation.

23.30 Sec. 33. **[322C.0404] SHARING OF AND RIGHT TO DISTRIBUTIONS**
23.31 **BEFORE DISSOLUTION.**

23.32 Subdivision 1. **Equal distributions.** Any distributions made by a limited liability
23.33 company before its dissolution and winding up must be in equal shares among members

24.1 and dissociated members, except to the extent necessary to comply with any transfer
24.2 effective under section 322C.0502 and any charging order in effect under section
24.3 322C.0503.

24.4 Subd. 2. **Interim distributions.** A person has a right to a distribution before the
24.5 dissolution and winding up of a limited liability company only if the company decides
24.6 to make an interim distribution. A person's dissociation does not entitle the person to
24.7 a distribution.

24.8 Subd. 3. **Form of distributions.** A person does not have a right to demand or
24.9 receive a distribution from a limited liability company in any form other than money.
24.10 Except as otherwise provided in section 322C.0707, subdivision 3, a limited liability
24.11 company may distribute an asset in kind if each part of the asset is fungible with each
24.12 other part and each person receives a percentage of the asset equal in value to the person's
24.13 share of distributions.

24.14 Subd. 4. **Parity with creditors.** If a member or transferee becomes entitled to
24.15 receive a distribution, the member or transferee has the status of, and is entitled to all
24.16 remedies available to, a creditor of the limited liability company with respect to the
24.17 distribution.

24.18 Sec. 34. **[322C.0405] LIMITATIONS ON DISTRIBUTION.**

24.19 Subdivision 1. **Distribution restrictions.** A limited liability company may not
24.20 make a distribution if after the distribution:

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

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

24.28 Subd. 2. **Basis for decision.** A limited liability company may base a determination
24.29 that a distribution is not prohibited under subdivision 1 on financial statements prepared
24.30 on the basis of accounting practices and principles that are reasonable in the circumstances
24.31 or on a fair valuation or other method that is reasonable under the circumstances.

24.32 Subd. 3. **Effect of distribution.** Except as otherwise provided in subdivision 6, the
24.33 effect of a distribution under subdivision 1 is measured:

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

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

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

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

25.9 Subd. 4. **Equivalent to unsecured creditors.** A limited liability company's
25.10 indebtedness to a member incurred by reason of a distribution made according to this
25.11 section is at parity with the company's indebtedness to its general, unsecured creditors.

25.12 Subd. 5. **Exclusion from calculated indebtedness.** A limited liability company's
25.13 indebtedness, including indebtedness issued in connection with or as part of a distribution,
25.14 is not a liability for purposes of subdivision 1 if the terms of the indebtedness provide that
25.15 payment of principal and interest are made only to the extent that a distribution could
25.16 be made to members under this section.

25.17 Subd. 6. **Indebtedness as distribution.** If indebtedness is issued as a distribution,
25.18 each payment of principal or interest on the indebtedness is treated as a distribution, the
25.19 effect of which is measured on the date the payment is made.

25.20 Subd. 7. **Compensation not distribution.** In subdivision 1, "distribution" does not
25.21 include amounts constituting reasonable compensation for present or past services or
25.22 reasonable payments made in the ordinary course of business under a bona fide retirement
25.23 plan or other benefits program.

25.24 Sec. 35. **[322C.0406] LIABILITY FOR IMPROPER DISTRIBUTIONS.**

25.25 Subdivision 1. **Personal liability for decision makers.** Except as otherwise
25.26 provided in subdivision 2, if a member of a member-managed limited liability
25.27 company, manager of a manager-managed limited liability company, or governor of a
25.28 board-managed limited liability company consents to a distribution made in violation of
25.29 section 322C.0405 and in consenting to the distribution fails to comply with section
25.30 322C.0409, the member, manager, or governor is personally liable to the company for
25.31 the amount of the distribution that exceeds the amount that could have been distributed
25.32 without the violation of section 322C.0405.

25.33 Subd. 2. **Liability exception.** To the extent the operating agreement of a
25.34 member-managed limited liability company expressly relieves a member of the authority
25.35 and responsibility to consent to distributions and imposes that authority and responsibility

26.1 on one or more other members, the liability stated in subdivision 1 applies to the other
26.2 members and not the member that the operating agreement relieves of authority and
26.3 responsibility.

26.4 Subd. 3. **Liability of recipients.** A person that receives a distribution knowing that
26.5 the distribution to that person was made in violation of section 322C.0405 is personally
26.6 liable to the limited liability company but only to the extent that the distribution received
26.7 by the person exceeded the amount that could have been properly paid under section
26.8 322C.0405.

26.9 Subd. 4. **Impleading.** A person against which an action is commenced because the
26.10 person is liable under subdivision 1 may:

26.11 (1) implead any other person that is subject to liability under subdivision 1 and seek
26.12 to compel pro rata contribution from the person in that action to the extent of the person's
26.13 liability as provided in section 322C.0406, subdivision 1; and

26.14 (2) implead any person that received a distribution in violation of section 322C.0405
26.15 and seek to compel contribution from the person in the amount by which the distribution
26.16 received by the person exceeded the amount that could have been properly paid under
26.17 section 322C.0405.

26.18 Subd. 5. **Statute of limitations.** An action under this section is barred if not
26.19 commenced within two years after the distribution.

26.20 Sec. 36. **[322C.0407] MANAGEMENT OF LIMITED LIABILITY COMPANY.**

26.21 Subdivision 1. **Member-managed default.** A limited liability company is a
26.22 member-managed limited liability company unless the operating agreement:

26.23 (1) expressly provides that:

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

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

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

26.28 (2) includes words of similar import.

26.29 Subd. 2. **Member-managed company rules.** In a member-managed limited
26.30 liability company, the following rules apply:

26.31 (1) The management and conduct of the company are vested in the members.

26.32 (2) Each member has equal rights in the management and conduct of the company's
26.33 activities.

26.34 (3) A difference arising among members as to a matter in the ordinary course of the
26.35 activities of the company may be decided by a majority of the members.

27.1 (4) An act outside the ordinary course of the activities of the company may be
27.2 undertaken only with the consent of all members.

27.3 (5) The operating agreement may be amended only with the consent of all members.

27.4 Subd. 3. **Manager-managed company rules.** In a manager-managed limited
27.5 liability company, the following rules apply:

27.6 (1) Except as otherwise expressly provided in this chapter, any matter relating to the
27.7 activities of the company is decided exclusively by the managers.

27.8 (2) Each manager has equal rights in the management and conduct of the activities
27.9 of the company.

27.10 (3) A difference arising among managers as to a matter in the ordinary course of the
27.11 activities of the company may be decided by a majority of the managers.

27.12 (4) The consent of all members is required to:

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

27.16 (ii) approve a merger, conversion, or domestication under sections 322C.1001 to
27.17 322C.1015;

27.18 (iii) undertake any other act outside the ordinary course of the company's activities;
27.19 and

27.20 (iv) amend the operating agreement.

27.21 (5) A manager may be chosen at any time by the consent of a majority of the
27.22 members and remains a manager until a successor has been chosen, unless the manager
27.23 at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not
27.24 an individual, terminates. A manager may be removed at any time by the consent of a
27.25 majority of the members without notice or cause.

27.26 (6) A person need not be a member to be a manager, but the dissociation of a
27.27 member that is also a manager removes the person as a manager. If a person that is both a
27.28 manager and a member ceases to be a manager, that cessation does not by itself dissociate
27.29 the person as a member.

27.30 (7) A person's ceasing to be a manager does not discharge any debt, obligation, or
27.31 other liability to the limited liability company or members which the person incurred
27.32 while a manager.

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

27.35 (1) The activities and affairs of a limited liability company are to be managed by and
27.36 under the direction of a board of governors, which shall consist of one or more governors

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28.1 as determined by members holding a majority of the voting power of the members. Except
28.2 as specifically stated in this subdivision and section 322C.0204, subdivision 5:

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

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

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

28.9 (2) A governor must be a natural person. A person need not be a member to be a
28.10 governor, but the dissociation of a member who is also a governor disqualifies the person
28.11 as a governor. If a person who is both a governor and a member ceases to be a governor,
28.12 that cessation does not by itself dissociate the person as a member. A person's ceasing
28.13 to be a governor does not discharge any debt, obligation, or other liability to the limited
28.14 liability company or members which the person incurred while a governor.

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

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

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

28.32 (6) When a vacancy occurs, the limited liability company shall immediately notify
28.33 all members in a record of the vacancy, stating the cause of the vacancy and the date the
28.34 notice is sent. Within 30 days of that date, the members may fill the vacancy in the same
28.35 method the members may elect governors under clause (3). If the vacancy is not filled

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29.1 by the members under this clause, the vacancy may be filled by the affirmative vote of a
29.2 majority of the remaining governors, even though less than a quorum.

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

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

29.13 (i) Notice may be:

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

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

29.20 (C) communicated to the governor orally;

29.21 (D) handed to the governor;

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

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

29.27 (ii) The notice is deemed given if by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32.4 (ii) approve a merger, conversion, or domestication under sections 322C.1001 to
32.5 322C.1015; and

32.6 (iii) amend the operating agreement.

32.7 (17) For purposes of this subdivision, each member possesses voting power in
32.8 proportion to the member's interest in then current profits of the limited liability company
32.9 and a majority of the voting power of the members is a quorum at a meeting of the
32.10 members.

32.11 Subd. 5. **Member consent.** Any member may demand a meeting of the members to
32.12 take action requiring consent of members under this chapter upon not less than 20 days'
32.13 notice to each member in a record of the date and time of the meeting. Any meeting held
32.14 upon member notice shall be held at the limited liability company's principal office if
32.15 located within this state, and at the registered office if the principal office is not located
32.16 within the state. Any action requiring the consent of members under this chapter may be
32.17 taken or approved without a meeting by the written consent of the members holding the
32.18 voting power required to take such action at a duly called meeting at which all members
32.19 were present. A member may appoint a proxy or other agent to consent or otherwise act
32.20 for the member by signing an appointing record, personally or by the member's agent.

32.21 Subd. 6. **Impact of dissolution.** The dissolution of a limited liability company does
32.22 not affect the applicability of this section. However, a person that wrongfully causes
32.23 dissolution of the company loses the right to participate in management in any capacity.

32.24 Subd. 7. **Remuneration.** This chapter does not entitle a member to remuneration
32.25 for services performed for a member-managed limited liability company, except for
32.26 reasonable compensation for services rendered in winding up the activities of the company.

32.27 **Sec. 37. [322C.0408] INDEMNIFICATION AND INSURANCE.**

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

32.30 (b) "Limited liability company" includes a domestic or foreign limited liability
32.31 company that was the predecessor of the limited liability company referred to in this
32.32 section in a merger or other transaction in which the predecessor's existence ceased upon
32.33 consummation of the transaction.

32.34 (c) "Official capacity" means (1) with respect to a member of a member-managed
32.35 company, a manager of a manager-managed company, or a governor of a board-managed

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33.1 company, actions taken in that capacity, (2) with respect to a person other than a member of
33.2 a member-managed company, a manager of a manager-managed company, or a governor
33.3 of a board-managed company, the elective or appointive office or position held by a
33.4 manager or officer, member of a committee of the board of governors, the employment
33.5 relationship undertaken by an employee of the limited liability company, or the scope of
33.6 the services provided by members of the limited liability company who provide services
33.7 to the limited liability company, and (3) with respect to a governor, manager, member,
33.8 or employee of the limited liability company who, while a member, governor, manager,
33.9 or employee of the limited liability company, is or was serving at the request of the
33.10 limited liability company or whose duties in that position involve or involved service as
33.11 a governor, director, manager, officer, member, partner, trustee, employee, or agent of
33.12 another organization or employee benefit plan, the position of that person as a governor,
33.13 director, manager, officer, member, partner, trustee, employee, or agent, as the case may
33.14 be, of the other organization or employee benefit plan.

33.15 (d) "Proceeding" means a threatened, pending, or completed civil, criminal,
33.16 administrative, arbitration, or investigative proceeding, including a proceeding by or in
33.17 the right of the limited liability company.

33.18 (e) "Special legal counsel" means counsel who has not in the preceding five years
33.19 (1) represented the limited liability company or a related organization in a capacity other
33.20 than special legal counsel, or (2) represented a member, governor, manager, member of a
33.21 committee of the board of governors, or employee, or other person whose indemnification
33.22 is in issue.

33.23 Subd. 2. **Indemnification.** (a) Subject to the provisions of subdivision 4, a limited
33.24 liability company shall indemnify a person made or threatened to be made a party to a
33.25 proceeding by reason of the former or present official capacity of the person against
33.26 judgments, penalties, fines, including, without limitation, excise taxes assessed against the
33.27 person with respect to an employee benefit plan, settlements, and reasonable expenses,
33.28 including attorney fees and disbursements, incurred by the person in connection with the
33.29 proceeding, if, with respect to the acts or omissions of the person complained of in the
33.30 proceeding, the person:

33.31 (1) has not been indemnified by another organization or employee benefit plan for
33.32 the same judgments, penalties, fines, including, without limitation, excise taxes assessed
33.33 against the person with respect to an employee benefit plan, settlements, and reasonable
33.34 expenses, including attorney fees and disbursements, incurred by the person in connection
33.35 with the proceeding with respect to the same acts or omissions;

33.36 (2) acted in good faith;

34.1 (3) received no improper personal benefit and complied with the duties stated in
34.2 sections 322C.0405 and 322C.0409, if applicable;

34.3 (4) in the case of a criminal proceeding, had no reasonable cause to believe the
34.4 conduct was unlawful; and

34.5 (5) in the case of acts or omissions occurring in the official capacity described in
34.6 subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was
34.7 in the best interests of the limited liability company, or in the case of acts or omissions
34.8 occurring in the official capacity described in subdivision 1, paragraph (c), clause (3),
34.9 reasonably believed that the conduct was not opposed to the best interests of the limited
34.10 liability company. If the person's acts or omissions complained of in the proceeding relate
34.11 to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan,
34.12 the conduct is not considered to be opposed to the best interests of the limited liability
34.13 company if the person reasonably believed that the conduct was in the best interests of the
34.14 participants or beneficiaries of the employee benefit plan.

34.15 (b) The termination of a proceeding by judgment, order, settlement, conviction, or
34.16 upon a plea of nolo contendere or its equivalent does not, of itself, establish that the
34.17 person did not meet the criteria set forth in this subdivision.

34.18 Subd. 3. **Advances.** Subject to the provisions of subdivision 4, if a person is made
34.19 or threatened to be made a party to a proceeding, the person is entitled, upon written
34.20 request to the limited liability company, to payment or reimbursement by the limited
34.21 liability company of reasonable expenses, including attorney fees and disbursements,
34.22 incurred by the person in advance of the final disposition of the proceeding:

34.23 (1) upon receipt by the limited liability company of a written affirmation by the
34.24 person of a good faith belief that the criteria for indemnification in subdivision 2 have
34.25 been satisfied and a written undertaking by the person to repay all amounts so paid or
34.26 reimbursed by the limited liability company, if it is ultimately determined that the criteria
34.27 for indemnification have not been satisfied; and

34.28 (2) after a determination that the facts then known to those making the determination
34.29 would not preclude indemnification under this section.

34.30 The written undertaking required by clause (1) is an unlimited general obligation of
34.31 the person making it, but need not be secured and shall be accepted without reference to
34.32 financial ability to make the repayment.

34.33 Subd. 4. **Prohibition or limit on indemnification or advances.** The articles of
34.34 organization or the operating agreement either may prohibit indemnification or advances of
34.35 expenses otherwise required by this section or may impose conditions on indemnification
34.36 or advances of expenses in addition to the conditions contained in subdivisions 2 and 3

35.1 including, without limitation, monetary limits on indemnification or advances of expenses,
35.2 if the conditions apply equally to all persons or to all persons within a given class. A
35.3 prohibition or limit on indemnification or advances may not apply to or affect the right
35.4 of a person to indemnification or advances of expenses with respect to any acts or
35.5 omissions of the person occurring before the effective date of a provision in the articles of
35.6 organization, a member control agreement, or the date of adoption of a provision in the
35.7 bylaws establishing the prohibition or limit on indemnification or advances.

35.8 Subd. 5. **Reimbursement to witnesses.** This section does not require, or limit the
35.9 ability of, a limited liability company to reimburse expenses, including attorney fees
35.10 and disbursements, incurred by a person in connection with an appearance as a witness
35.11 in a proceeding at a time when the person has not been made or threatened to be made
35.12 a party to a proceeding.

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

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

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

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

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

35.30 (2) in all other cases, by the affirmative vote of the members, with each member
35.31 having voting power in proportion to the member's interest in then current profits of the
35.32 limited liability company, but the membership interests held by parties to the proceeding
35.33 must not be counted in determining the presence of a quorum and are not considered to be
35.34 present and entitled to vote on the determination; or

35.35 (3) if an adverse determination is made under clauses (1) or (2), or if no
35.36 determination is made under clauses (1) or (2) within 60 days after (i) the later to occur

36.1 of the termination of a proceeding or a written request for indemnification to the limited
36.2 liability company or (ii) a written request for an advance of expenses, as the case may be,
36.3 by a court in this state, which may be the same court in which the proceeding involving
36.4 the person's liability took place, upon application of the person and any notice the
36.5 court requires. The person seeking indemnification or payment or reimbursement of
36.6 expenses pursuant to this clause has the burden of establishing that the person is entitled to
36.7 indemnification or payment or reimbursement of expenses.

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

36.21 Subd. 7. **Insurance.** A limited liability company may purchase and maintain
36.22 insurance on behalf of a member, manager, or governor of the company against liability
36.23 asserted against or incurred by the member, manager, or governor in that capacity or
36.24 arising from that status even if, under section 322C.0110, subdivision 7, the operating
36.25 agreement could not eliminate or limit the person's liability to the company for the conduct
36.26 giving rise to the liability and whether or not the limited liability company would have
36.27 been required to indemnify the person against the liability under this section.

36.28 Subd. 8. **Disclosure.** A limited liability company that indemnifies or advances
36.29 expenses to a person according to this section in connection with a proceeding by or on
36.30 behalf of the limited liability company shall report to the members in writing the amount
36.31 of the indemnification or advance and to whom and on whose behalf it was paid not
36.32 later than the next meeting of members.

36.33 Subd. 9. **Indemnification of other persons.** Nothing in this section must be
36.34 construed to limit the power of the limited liability company to indemnify persons other
36.35 than a governor, manager, member, employee, or member of a committee of the board
36.36 of the limited liability company, by contract or otherwise.

37.1 Sec. 38. [322C.0409] STANDARDS OF CONDUCT FOR MEMBERS,
37.2 MANAGERS, AND GOVERNORS.

37.3 Subdivision 1. **Scope of duties.** A member of a member-managed limited liability
37.4 company owes to the company and, subject to section 322C.0901, subdivision 2, the other
37.5 members the fiduciary duties of loyalty and care stated in subdivisions 2 and 3.

37.6 Subd. 2. **Duty of loyalty.** The duty of loyalty of a member in a member-managed
37.7 limited liability company includes the duties:

37.8 (1) to account to the company and to hold as trustee for it any property, profit, or
37.9 benefit derived by the member:

37.10 (i) in the conduct or winding up of the company's activities;

37.11 (ii) from a use by the member of the company's property; or

37.12 (iii) from the appropriation of a limited liability company opportunity;

37.13 (2) to refrain from dealing with the company in the conduct or winding up of
37.14 the company's activities as or on behalf of a person having an interest adverse to the
37.15 company; and

37.16 (3) to refrain from competing with the company in the conduct of the company's
37.17 activities before the dissolution of the company.

37.18 Subd. 3. **Duty of care.** Subject to the business judgment rule, the duty of care of a
37.19 member of a member-managed limited liability company in the conduct and winding up
37.20 of the company's activities is to act with the care that a person in a like position would
37.21 reasonably exercise under similar circumstances and in a manner the member reasonably
37.22 believes to be in the best interests of the company. In discharging this duty, a member
37.23 may rely in good faith on opinions, reports, statements, or other information provided by
37.24 another person that the member reasonably believes is a competent and reliable source
37.25 for the information.

37.26 Subd. 4. **Contractual obligation of good faith and fair dealing.** A member in
37.27 a member-managed limited liability company or a manager-managed limited liability
37.28 company shall discharge the duties under this chapter or under the operating agreement
37.29 and exercise any rights consistently with the contractual obligation of good faith and
37.30 fair dealing.

37.31 Subd. 5. **Fairness defense.** It is a defense to a claim under subdivision 2, clause
37.32 (2), and any comparable claim in equity or at common law that the transaction was fair
37.33 to the limited liability company.

37.34 Subd. 6. **Authorization and ratification.** All of the members of a member-managed
37.35 limited liability company or a manager-managed limited liability company may authorize

38.1 or ratify, after full disclosure of all material facts, a specific act or transaction that
38.2 otherwise would violate the duty of loyalty.

38.3 Subd. 7. **Manager-managed company rules.** In a manager-managed limited
38.4 liability company, the following rules apply:

38.5 (1) Subdivisions 1, 2, 3, and 5 apply to the manager or managers and not the
38.6 members.

38.7 (2) The duty stated under subdivision 2, clause (3), continues until winding up
38.8 is completed.

38.9 (3) Subdivision 4 applies to the members and managers.

38.10 (4) Subdivision 6 applies only to the members.

38.11 (5) A member does not have any fiduciary duty to the company or to any other
38.12 member solely by reason of being a member.

38.13 Subd. 8. **Board-managed company rules.** In a board-managed limited liability
38.14 company, the following rules apply:

38.15 (1) Subdivisions 1, 2, 3, and 5 apply to the governors and not the members.

38.16 (2) The duty stated under subdivision 2, clause (3), continues until winding up
38.17 is completed.

38.18 (3) Subdivision 4 applies to the members and governors.

38.19 (4) Subdivision 6 applies only to the members.

38.20 (5) A member does not have any fiduciary duty to the company or to any other
38.21 member solely by reason of being a member.

38.22 Sec. 39. **[322C.0410] RIGHT OF MEMBERS, MANAGERS, GOVERNORS,**
38.23 **AND DISSOCIATED MEMBERS TO INFORMATION.**

38.24 Subdivision 1. **Member-managed company rules.** In a member-managed limited
38.25 liability company, the following rules apply:

38.26 (1) On reasonable notice, a member may inspect and copy during regular business
38.27 hours, at a reasonable location specified by the company, any record maintained by the
38.28 company regarding the company's activities, financial condition, and other circumstances,
38.29 to the extent the information is material to the member's rights and duties under the
38.30 operating agreement or this chapter.

38.31 (2) The company shall furnish to each member:

38.32 (i) without demand, any information concerning the company's activities, financial
38.33 condition, and other circumstances which the company knows and is material to the
38.34 proper exercise of the member's rights and duties under the operating agreement or this

39.1 chapter, except to the extent the company can establish that it reasonably believes the
39.2 member already knows the information; and

39.3 (ii) on demand, any other information concerning the company's activities, financial
39.4 condition, and other circumstances, except to the extent the demand or information
39.5 demanded is unreasonable or otherwise improper under the circumstances.

39.6 (3) The duty to furnish information under clause (2) also applies to each member to
39.7 the extent the member knows any of the information described in clause (2).

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

39.10 (1) The informational rights stated in subdivision 1 and the duty stated in subdivision
39.11 1, clause (3), apply to the managers or governors and not the members.

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

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

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

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

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

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

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

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

39.32 Subd. 3. **Dissociated member access.** On ten days' demand made in a record
39.33 received by a limited liability company, a dissociated member may have access to
39.34 information to which the person was entitled while a member if the information pertains to
39.35 the period during which the person was a member, the person seeks the information in
39.36 good faith, and the person satisfies the requirements imposed on a member by subdivision

40.1 2, clause (2). The company shall respond to a demand made pursuant to this subdivision
40.2 in the manner provided in subdivision 2, clause (3).

40.3 Subd. 4. **Access costs.** A limited liability company may charge a person that makes
40.4 a demand under this section the reasonable costs of copying, limited to the costs of labor
40.5 and material.

40.6 Subd. 5. **Agent use.** A member or dissociated member may exercise rights under
40.7 this section through an agent or, in the case of an individual under legal disability, a
40.8 legal representative. Any restriction or condition imposed by the operating agreement or
40.9 under subdivision 7 applies both to the agent or legal representative and the member
40.10 or dissociated member.

40.11 Subd. 6. **Transferee excluded.** The rights under this section do not extend to a
40.12 person as transferee.

40.13 Subd. 7. **Reasonable restrictions to access.** In addition to any restriction or
40.14 condition stated in its operating agreement, a limited liability company, as a matter within
40.15 the ordinary course of its activities, may impose reasonable restrictions and conditions on
40.16 access to and use of information to be furnished under this section, including designating
40.17 information confidential and imposing nondisclosure and safeguarding obligations on
40.18 the recipient. In a dispute concerning the reasonableness of a restriction under this
40.19 subdivision, the company has the burden of proving reasonableness.

40.20 **TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES**
40.21 **AND CREDITORS**

40.22 **Sec. 40. [322C.0501] NATURE OF TRANSFERABLE INTEREST.**

40.23 A transferable interest is personal property.

40.24 **Sec. 41. [322C.0502] TRANSFER OF TRANSFERABLE INTEREST.**

40.25 Subdivision 1. **Transfers.** A transfer, in whole or in part, of a transferable interest:

40.26 (1) is permissible;

40.27 (2) does not by itself cause a member's dissociation or a dissolution and winding up
40.28 of the limited liability company's activities; and

40.29 (3) subject to section 322C.0504, does not entitle the transferee to:

40.30 (i) participate in the management or conduct of the company's activities; or

40.31 (ii) except as otherwise provided in subdivision 3, have access to records or other
40.32 information concerning the company's activities.

41.1 Subd. 2. **Transferee right to distributions.** A transferee has the right to receive,
41.2 in accordance with the transfer, distributions to which the transferor would otherwise
41.3 be entitled.

41.4 Subd. 3. **Transferee right to an account.** In a dissolution and winding up of
41.5 a limited liability company, a transferee is entitled to an account of the company's
41.6 transactions only from the date of dissolution.

41.7 Subd. 4. **Evidence of interest.** A transferable interest may be evidenced by a
41.8 certificate of the interest issued by the limited liability company in a record, and, subject
41.9 to this section, the interest represented by the certificate may be transferred by a transfer of
41.10 the certificate.

41.11 Subd. 5. **Company notice required.** A limited liability company need not give
41.12 effect to a transferee's rights under this section until the company has notice of the transfer.

41.13 Subd. 6. **Violative transfers ineffective.** A transfer of a transferable interest in
41.14 violation of a restriction on transfer contained in the operating agreement is ineffective as
41.15 to a person having notice of the restriction at the time of transfer.

41.16 Subd. 7. **Rights retained.** Except as otherwise provided in section 322C.0602,
41.17 clause (4), item (ii), when a member transfers a transferable interest, the transferor retains
41.18 the rights of a member other than the interest in distributions transferred and retains all
41.19 duties and obligations of a member.

41.20 Subd. 8. **Transferee liability.** When a member transfers a transferable interest to a
41.21 person that becomes a member with respect to the transferred interest, the transferee is
41.22 liable for the member's obligations under sections 322C.0403 and 322C.0406, subdivision
41.23 3, known to the transferee when the transferee becomes a member.

41.24 Sec. 42. **[322C.0503] CHARGING ORDER.**

41.25 Subdivision 1. **Charging order against transferable interest.** On application
41.26 by a judgment creditor of a member or transferee, a court may enter a charging order
41.27 against the transferable interest of the judgment debtor for the unsatisfied amount of the
41.28 judgment. A charging order constitutes a lien on a judgment debtor's transferable interest
41.29 and requires the limited liability company to pay over to the person to which the charging
41.30 order was issued any distribution that would otherwise be paid to the judgment debtor.

41.31 Subd. 2. **Charging order effectuation.** To the extent necessary to effectuate the
41.32 collection of distributions pursuant to a charging order in effect under subdivision 1,
41.33 the court may:

41.34 (1) appoint a receiver of the distributions subject to the charging order, with the
41.35 power to make all inquiries the judgment debtor might have made; and

42.1 (2) make all other orders necessary to give effect to the charging order.

42.2 Subd. 3. **Foreclosure and sale.** Upon a showing that distributions under a charging
42.3 order will not pay the judgment debt within a reasonable time, the court may foreclose
42.4 the lien and order the sale of the transferable interest. The purchaser at the foreclosure
42.5 sale obtains only the transferable interest, does not thereby become a member, and is
42.6 subject to section 322C.0502.

42.7 Subd. 4. **Extinguishing charging order.** At any time before foreclosure under
42.8 subdivision 3, the member or transferee whose transferable interest is subject to a charging
42.9 order under subdivision 1 may extinguish the charging order by satisfying the judgment
42.10 and filing a certified copy of the satisfaction with the court that issued the charging order.

42.11 Subd. 5. **Succession to rights of judgment creditor.** At any time before
42.12 foreclosure under subdivision 3, a limited liability company or one or more members
42.13 whose transferable interests are not subject to the charging order may pay to the judgment
42.14 creditor the full amount due under the judgment and thereby succeed to the rights of the
42.15 judgment creditor, including the charging order.

42.16 Subd. 6. **Exemption laws applicable.** This chapter does not deprive any member or
42.17 transferee of the benefit of any exemption laws applicable to the member's or transferee's
42.18 transferable interest.

42.19 Subd. 7. **Exclusive remedy.** This section provides the exclusive remedy by which a
42.20 person seeking to enforce a judgment against a member or transferee may, in the capacity
42.21 of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

42.22 Sec. 43. **[322C.0504] POWER OF PERSONAL REPRESENTATIVE OF**
42.23 **DECEASED MEMBER.**

42.24 If a member dies, the deceased member's personal representative or other legal
42.25 representative may exercise the rights of a transferee provided in section 322C.0502,
42.26 subdivision 3, and, for the purposes of settling the estate, the rights of a current member
42.27 under section 322C.0410.

42.28 **MEMBER'S DISSOCIATION**

42.29 Sec. 44. **[322C.0601] MEMBER'S POWER TO DISSOCIATE; WRONGFUL**
42.30 **DISSOCIATION.**

42.31 Subdivision 1. **Power to dissociate.** A person has the power to dissociate as a
42.32 member at any time, rightfully or wrongfully, by withdrawing as a member by express
42.33 will under section 322C.0602, clause (1).

43.1 Subd. 2. **Wrongful dissociation.** A person's dissociation from a limited liability
43.2 company is wrongful only if the dissociation:

43.3 (1) is in breach of an express provision of the operating agreement; or

43.4 (2) occurs before the termination of the company and:

43.5 (i) the person withdraws as a member by express will;

43.6 (ii) the person is expelled as a member by judicial order under section 322C.0602,
43.7 clause (5);

43.8 (iii) the person is dissociated under section 322C.0602, clause (7), item (i), by
43.9 becoming a debtor in bankruptcy; or

43.10 (iv) in the case of a person that is not a trust other than a business trust, an estate,
43.11 or an individual, the person is expelled or otherwise dissociated as a member because it
43.12 willfully dissolved or terminated.

43.13 Subd. 3. **Liability for wrongful dissociation.** A person that wrongfully dissociates
43.14 as a member is liable to the limited liability company and, subject to section 322C.0901,
43.15 to the other members for damages caused by the dissociation. The liability is in addition
43.16 to any other debt, obligation, or other liability of the member to the company or the other
43.17 members.

43.18 Sec. 45. **[322C.0602] EVENTS CAUSING DISSOCIATION.**

43.19 A person is dissociated as a member from a limited liability company when:

43.20 (1) the company has notice of the person's express will to withdraw as a member,
43.21 but, if the person specified a withdrawal date later than the date the company had notice,
43.22 on that later date;

43.23 (2) an event stated in the operating agreement as causing the person's dissociation
43.24 occurs;

43.25 (3) the person is expelled as a member pursuant to the operating agreement;

43.26 (4) the person is expelled as a member by the unanimous consent of the other
43.27 members if:

43.28 (i) it is unlawful to carry on the company's activities with the person as a member;

43.29 (ii) there has been a transfer of all of the person's transferable interest in the
43.30 company, other than:

43.31 (A) a transfer for security purposes; or

43.32 (B) a charging order in effect under section 322C.0503 which has not been
43.33 foreclosed;

43.34 (iii) the person is a corporation and, within 90 days after the company notifies the
43.35 person that it will be expelled as a member because the person has filed a certificate of

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44.1 dissolution or the equivalent, its charter has been revoked, or its right to conduct business
44.2 has been suspended by the jurisdiction of its incorporation, the certificate of dissolution
44.3 has not been revoked or its charter or right to conduct business has not been reinstated; or

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

44.6 (5) on application by the company, the person is expelled as a member by judicial
44.7 order because the person:

44.8 (i) has engaged, or is engaging, in wrongful conduct that has adversely and
44.9 materially affected, or will adversely and materially affect, the company's activities;

44.10 (ii) has willfully or persistently committed, or is willfully and persistently
44.11 committing, a material breach of the operating agreement or the person's duties or
44.12 obligations under section 322C.0409; or

44.13 (iii) has engaged, or is engaging, in conduct relating to the company's activities which
44.14 makes it not reasonably practicable to carry on the activities with the person as a member;

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

44.16 (i) the person dies; or

44.17 (ii) in a member-managed limited liability company:

44.18 (A) a guardian or general conservator for the person is appointed; or

44.19 (B) there is a judicial order that the person has otherwise become incapable of
44.20 performing the person's duties as a member under this chapter or the operating agreement;

44.21 (7) in a member-managed limited liability company, the person:

44.22 (i) becomes a debtor in bankruptcy;

44.23 (ii) executes an assignment for the benefit of creditors; or

44.24 (iii) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or
44.25 liquidator of the person or of all or substantially all of the person's property;

44.26 (8) in the case of a person that is a trust or is acting as a member by virtue of being a
44.27 trustee of a trust, the trust's entire transferable interest in the company is distributed;

44.28 (9) in the case of a person that is an estate or is acting as a member by virtue of
44.29 being a personal representative of an estate, the estate's entire transferable interest in the
44.30 company is distributed;

44.31 (10) in the case of a member that is not an individual, partnership, limited liability
44.32 company, corporation, trust, or estate, the termination of the member;

44.33 (11) the company participates in a merger under sections 322C.1001 to 322C.1015,

44.34 if:

44.35 (i) the company is not the surviving entity; or

44.36 (ii) otherwise as a result of the merger, the person ceases to be a member;

45.1 (12) the company participates in a conversion under sections 322C.1001 to
45.2 322C.1015;

45.3 (13) the company participates in a domestication under sections 322C.1001 to
45.4 322C.1015, if, as a result of the domestication, the person ceases to be a member; or

45.5 (14) the company terminates.

45.6 Sec. 46. **[322C.0603] EFFECT OF PERSON'S DISSOCIATION AS MEMBER.**

45.7 Subdivision 1. **Effect of dissociation.** When a person is dissociated as a member of
45.8 a limited liability company:

45.9 (1) the person's right to participate as a member in the management and conduct of
45.10 the company's activities terminates;

45.11 (2) if the company is member-managed, the person's fiduciary duties as a member
45.12 end with regard to matters arising and events occurring after the person's dissociation; and

45.13 (3) subject to sections 322C.0504 and 322C.1001 to 322C.1015, any transferable
45.14 interest owned by the person immediately before dissociation in the person's capacity as
45.15 a member is owned by the person solely as a transferee.

45.16 Subd. 2. **No discharge.** A person's dissociation as a member of a limited liability
45.17 company does not of itself discharge the person from any debt, obligation, or other
45.18 liability to the company or the other members that the person incurred while a member.

45.19 **DISSOLUTION AND WINDING UP**

45.20 Sec. 47. **[322C.0701] EVENTS CAUSING DISSOLUTION.**

45.21 Subdivision 1. **Dissolution events.** A limited liability company is dissolved, and its
45.22 activities must be wound up, upon the occurrence of any of the following:

45.23 (1) an event or circumstance that the operating agreement states causes dissolution;

45.24 (2) the consent of all the members;

45.25 (3) following the admission of the initial member or members, the passage of 90
45.26 consecutive days during which the company has no members;

45.27 (4) on application by a member, the entry by appropriate court of an order dissolving
45.28 the company on the grounds that:

45.29 (i) the conduct of all or substantially all of the company's activities is unlawful; or

45.30 (ii) it is not reasonably practicable to carry on the company's activities in conformity
45.31 with the articles of organization and the operating agreement;

45.32 (5) on application by a member, the entry by appropriate court of an order dissolving
45.33 the company on the grounds that the managers, governors, or those members in control of
45.34 the company:

46.1 (i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
46.2 (ii) have acted or are acting in a manner that is oppressive and was, is, or will be
46.3 directly harmful to the applicant; or

46.4 (6) on application by the attorney general in an action commenced pursuant to
46.5 section 322C.0708, the entry by appropriate court of an order dissolving the company on
46.6 grounds specified in 322C.0708.

46.7 Subd. 2. **Alternative remedies.** In a proceeding brought under subdivision 1, clause
46.8 (5), the court may order a remedy other than dissolution.

46.9 Sec. 48. **[322C.0702] WINDING UP.**

46.10 Subdivision 1. **Winding up required.** A dissolved limited liability company shall
46.11 wind up its activities, and the company continues after dissolution only for the purpose
46.12 of winding up.

46.13 Subd. 2. **Winding up process.** In winding up its activities, a limited liability
46.14 company:

46.15 (1) shall discharge the company's debts, obligations, or other liabilities, settle and
46.16 close the company's activities, and marshal and distribute the assets of the company; and

46.17 (2) may:

46.18 (i) file with the secretary of state a statement of dissolution stating the name of the
46.19 company and that the company is dissolved;

46.20 (ii) preserve the company activities and property as a going concern for a reasonable
46.21 time;

46.22 (iii) prosecute and defend actions and proceedings, whether civil, criminal, or
46.23 administrative;

46.24 (iv) transfer the company's property;

46.25 (v) settle disputes by mediation or arbitration;

46.26 (vi) file with the secretary of state a statement of termination stating the name of the
46.27 company and that the company is terminated; and

46.28 (vii) perform other acts necessary or appropriate to the winding up.

46.29 Subd. 3. **Winding up by legal representative.** If a dissolved limited liability
46.30 company has no members, the legal representative of the last person to have been a
46.31 member may wind up the activities of the company. If the person does so, the person has
46.32 the powers of a sole manager under section 322C.0407, subdivision 3, and is deemed to be
46.33 a manager for the purposes of section 322C.0304, subdivision 1, clause (2).

46.34 Subd. 4. **Winding up by person other than legal representative.** If the legal
46.35 representative under subdivision 3 declines or fails to wind up the company's activities, a

47.1 person may be appointed to do so by the consent of transferees owning a majority of the
47.2 rights to receive distributions as transferees at the time the consent is to be effective. A
47.3 person appointed under this subdivision:

47.4 (1) has the powers of a sole manager under section 322C.0407, subdivision 3, and
47.5 is deemed to be a manager for the purposes of section 322C.0304, subdivision 1, clause
47.6 (2); and

47.7 (2) shall promptly file with the secretary of state an amendment to the company's
47.8 articles of organization to:

47.9 (i) state that the company has no members;

47.10 (ii) state that the person has been appointed pursuant to this subdivision to wind up
47.11 the company; and

47.12 (iii) provide the street address of the person.

47.13 Subd. 5. **Judicial supervision.** The appropriate court may order judicial supervision
47.14 of the winding up of a dissolved limited liability company, including the appointment of a
47.15 person to wind up the company's activities:

47.16 (1) on application of a member, if the applicant establishes good cause;

47.17 (2) on the application of a transferee, if:

47.18 (i) the company does not have any members;

47.19 (ii) the legal representative of the last person to have been a member declines or fails
47.20 to wind up the company's activities; and

47.21 (iii) within a reasonable time following the dissolution a person has not been
47.22 appointed pursuant to subdivision 4; or

47.23 (3) in connection with a proceeding under section 322C.0701, subdivision 1, clause
47.24 (4) or (5).

47.25 Sec. 49. **[322C.0703] KNOWN CLAIMS AGAINST DISSOLVED LIMITED**
47.26 **LIABILITY COMPANY.**

47.27 Subdivision 1. **Notice of known claims.** Except as otherwise provided in
47.28 subdivision 4, a dissolved limited liability company may give notice of a known claim
47.29 under subdivision 2 that has the effect as provided in subdivision 3.

47.30 Subd. 2. **Notice requirements.** A dissolved limited liability company may in a
47.31 record notify its known claimants of the dissolution. The notice must:

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

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

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

48.1 (4) state that the claim will be barred if not received by the deadline.

48.2 Subd. 3. **Claims barred.** A claim against a dissolved limited liability company is
48.3 barred if the requirements of subdivision 2 are met and:

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

48.5 (2) if the claim is timely received but rejected by the company:

48.6 (i) the company causes the claimant to receive a notice in a record stating that the
48.7 claim is rejected and will be barred unless the claimant commences an action against the
48.8 company to enforce the claim within 90 days after the claimant receives the notice; and

48.9 (ii) the claimant does not commence the required action within the 90 days.

48.10 Subd. 4. **Bar limitation.** This section does not apply to a claim based on an event
48.11 occurring after the effective date of dissolution or a liability that on that date is contingent.

48.12 Sec. 50. **[322C.0704] OTHER CLAIMS AGAINST DISSOLVED LIMITED**
48.13 **LIABILITY COMPANY.**

48.14 Subdivision 1. **Publication of notice.** A dissolved limited liability company may
48.15 publish notice of its dissolution and request persons having claims against the company
48.16 to present them according to the notice.

48.17 Subd. 2. **Published notice requirements.** The notice authorized by subdivision 1
48.18 must:

48.19 (1) be published at least once in a newspaper of general circulation in the county or
48.20 counties in this state in which the dissolved limited liability company's principal office is
48.21 located or, if it has none in this state, in the county or counties in which the company's
48.22 registered office is or was last located;

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

48.25 (3) state that a claim against the company is barred unless an action to enforce the
48.26 claim is commenced within five years after publication of the notice.

48.27 Subd. 3. **Claims barred.** If a dissolved limited liability company publishes a notice
48.28 according to subdivision 2, unless the claimant commences an action to enforce the claim
48.29 against the company within five years after the publication date of the notice, the claim of
48.30 each of the following claimants is barred:

48.31 (1) a claimant that did not receive notice in a record under section 322C.0703;

48.32 (2) a claimant whose claim was timely sent to the company but not acted on; and

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

49.1 Subd. 4. **Claims enforcement.** A claim not barred under this section may be
49.2 enforced:

49.3 (1) against a dissolved limited liability company, to the extent of its undistributed
49.4 assets; and

49.5 (2) if assets of the company have been distributed after dissolution, against a member
49.6 or transferee to the extent of that person's proportionate share of the claim or of the assets
49.7 distributed to the member or transferee after dissolution, whichever is less, but a person's
49.8 total liability for all claims under this clause does not exceed the total amount of assets
49.9 distributed to the person after dissolution.

49.10 Sec. 51. **[322C.0705] ADMINISTRATIVE DISSOLUTION.**

49.11 (a) A domestic limited liability company that has not filed a renewal pursuant to
49.12 this section is administratively terminated. The secretary of state shall issue a certificate
49.13 of administrative termination which must be filed in the Office of the Secretary of State.
49.14 The secretary of state must also make available in an electronic format the names of
49.15 the terminated limited liability companies.

49.16 (b) A non-Minnesota limited liability company that has not filed a renewal pursuant
49.17 to this section shall have its authority to do business in Minnesota revoked pursuant to
49.18 section 322C.0806. The secretary of state must issue a certificate of revocation which
49.19 must be filed in the Office of the Secretary of State. The secretary of state must also
49.20 make available in an electronic format the names of the revoked non-Minnesota limited
49.21 liability companies.

49.22 Sec. 52. **[322C.0706] REINSTATEMENT FOLLOWING ADMINISTRATIVE**
49.23 **DISSOLUTION.**

49.24 (a) If a limited liability company is administratively terminated or has its authority to
49.25 do business in Minnesota revoked, it may retroactively reinstate its existence or authority
49.26 to do business by filing a single annual renewal and paying a \$25 fee.

49.27 (b) For a domestic limited liability company, filing the annual renewal with the
49.28 secretary of state:

49.29 (1) returns the limited liability company to active status as of the date of the
49.30 administrative termination;

49.31 (2) validates contracts or other acts within the authority of the articles, and the
49.32 limited liability company is liable for those contracts or acts; and

49.33 (3) restores to the limited liability company all assets and rights of the limited
49.34 liability company and its members to the extent they were held by the limited liability

50.1 company and its members before the administrative termination occurred, except to the
50.2 extent that assets or rights were affected by acts occurring after the termination, sold, or
50.3 otherwise distributed after that time.

50.4 (c) For a non-Minnesota limited liability company, filing the annual renewal restores
50.5 the limited liability company's ability to do business in Minnesota and the rights and
50.6 privileges that accompany that authority.

50.7 Sec. 53. **[322C.0707] DISTRIBUTION OF ASSETS IN WINDING UP LIMITED**
50.8 **LIABILITY COMPANY'S ACTIVITIES.**

50.9 Subdivision 1. **Application of assets to discharge obligations.** In winding up its
50.10 activities, a limited liability company must apply its assets to discharge its obligations to
50.11 creditors, including members that are creditors.

50.12 Subd. 2. **Distributions of surplus.** After a limited liability company complies
50.13 with subdivision 1, any surplus must be distributed in the following order, subject to any
50.14 charging order in effect under section 322C.0503:

50.15 (1) to each person owning a transferable interest that reflects contributions made by
50.16 a member and not previously returned, an amount equal to the value of the unreturned
50.17 contributions; and

50.18 (2) in equal shares among members and dissociated members, except to the extent
50.19 necessary to comply with any transfer effective under section 322C.0502.

50.20 Subd. 3. **Proportionate distribution.** If a limited liability company does not have
50.21 sufficient surplus to comply with subdivision 2, clause (1), any surplus must be distributed
50.22 among the owners of transferable interests in proportion to the value of their respective
50.23 unreturned contributions.

50.24 Subd. 4. **Form of distribution.** All distributions made under subdivisions 2 and 3
50.25 must be paid in money.

50.26 Sec. 54. **[322C.0708] ACTION BY ATTORNEY GENERAL.**

50.27 Subdivision 1. **When permitted.** A limited liability company may be involuntarily
50.28 dissolved, wound up, and terminated by a decree of a court in this state in an action filed
50.29 by the attorney general when it is established that:

50.30 (1) the articles of organization were procured through fraud;

50.31 (2) the limited liability company was organized for a purpose not permitted by
50.32 this chapter;

50.33 (3) the limited liability company failed to comply with the requirements essential to
50.34 organization under this chapter;

51.1 (4) the limited liability company has flagrantly violated a provision of this chapter,
51.2 has violated a provision of this chapter more than once, or has violated more than one
51.3 provision of this chapter; or

51.4 (5) the limited liability company has acted, or failed to act, in a manner that
51.5 constitutes surrender or abandonment of the limited liability company privileges or
51.6 enterprise.

51.7 Subd. 2. **Notice to limited liability company and correction.** An action must not
51.8 be commenced under this section until 30 days after notice to the limited liability company
51.9 by the attorney general of the reason for the filing of the action. If the reason for filing the
51.10 action is an act that the limited liability company has done, or omitted to do, and the act or
51.11 omission may be corrected by an amendment of the articles of organization, a member
51.12 control agreement, or the bylaws or by performance of or abstention from the act, the
51.13 attorney general shall give the limited liability company 30 additional days in which to
51.14 effect the correction before filing the action.

51.15 **FOREIGN LIMITED LIABILITY COMPANIES**

51.16 Sec. 55. **[322C.0801] GOVERNING LAW.**

51.17 Subdivision 1. **Scope of foreign law.** The law of the state or other jurisdiction under
51.18 which a foreign limited liability company is formed governs:

51.19 (1) the internal affairs of the company; and

51.20 (2) the liability of a member as member, a manager as manager, and a governor as
51.21 governor for the debts, obligations, or other liabilities of the company.

51.22 Subd. 2. **Restriction on denial of certificate of authority.** A foreign limited
51.23 liability company may not be denied a certificate of authority by reason of any difference
51.24 between the law of the jurisdiction under which the company is formed and the law of
51.25 this state.

51.26 Subd. 3. **No increase in foreign company's powers.** A certificate of authority does
51.27 not authorize a foreign limited liability company to engage in any business or exercise any
51.28 power that a limited liability company may not engage in or exercise in this state.

51.29 Sec. 56. **[322C.0802] APPLICATION FOR CERTIFICATE OF AUTHORITY.**

51.30 Before transacting business in this state, a foreign limited liability company shall
51.31 obtain a certificate of authority to transact business in this state by filing an application
51.32 with the secretary of state together with a total fee of \$185. The application must state:

51.33 (1) the name of the company and any alternate name adopted pursuant to section
51.34 322C.0805, subdivision 1;

52.1 (2) the name of the state or other jurisdiction under whose law the company is
52.2 formed;

52.3 (3) a statement that the foreign limited liability company has complied with the
52.4 organizational laws in the jurisdiction under whose laws the company is formed;

52.5 (4) the street address of the company's principal office and, if the law of the
52.6 jurisdiction under which the company is formed requires the company to maintain an
52.7 office in that jurisdiction, the street address of the required office; and

52.8 (5) the name and street address of the company's initial registered office and agent
52.9 for service of process in this state.

52.10 Sec. 57. **[322C.0803] TRANSACTIONS NOT CONSTITUTING TRANSACTING**
52.11 **BUSINESS.**

52.12 Subdivision 1. **Activities not constituting transacting business.** A foreign limited
52.13 liability company shall not be considered to be transacting business in this state for the
52.14 purposes of this chapter solely by reason of carrying on in this state any one or more of
52.15 the following, including:

52.16 (1) maintaining or defending any action or suit or any administrative or arbitration
52.17 proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

52.18 (2) holding meetings of its managers, governors, or members or carrying on other
52.19 activities concerning its internal affairs;

52.20 (3) maintaining bank accounts;

52.21 (4) maintaining offices or agencies for the transfer, exchange, and registration of
52.22 its securities, or appointing and maintaining trustees or depositaries with relation to its
52.23 securities;

52.24 (5) holding title to and managing real or personal property, or any interest therein,
52.25 situated in this state, as executor of the will or administrator of the estate of any decedent,
52.26 as trustee of any trust, or as guardian of any person or conservator of any person's estate;

52.27 (6) making, participating in, or investing in loans or creating, as borrower or lender,
52.28 or otherwise acquiring indebtedness or mortgages or other security interests in real or
52.29 personal property;

52.30 (7) securing or collecting its debts or enforcing any rights in property securing
52.31 them; or

52.32 (8) conducting an isolated transaction completed within a period of 30 days and not
52.33 in the course of a number of repeated transactions of like nature.

52.34 Subd. 2. **Property ownership.** For purposes of sections 322C.0801 to 322C.0809,
52.35 the ownership in this state of income-producing real property or tangible personal

53.1 property, other than property excluded under subdivision 1, constitutes transacting
53.2 business in this state.

53.3 Subd. 3. **Limitations.** This section does not apply in determining the contacts
53.4 or activities that may subject a foreign limited liability company to service of process,
53.5 taxation, or regulation under law of this state other than this chapter.

53.6 Sec. 58. **[322C.0804] FILING OF CERTIFICATE OF AUTHORITY.**

53.7 Unless the secretary of state determines that an application for a certificate of
53.8 authority does not comply with the filing requirements of this chapter, the secretary of
53.9 state, upon payment of all filing fees, shall file the application of a foreign limited liability
53.10 company; prepare, sign, and file a certificate of authority to transact business in this state;
53.11 and send a copy of the filed certificate, together with a receipt for the fees, to the company
53.12 or its representative.

53.13 Sec. 59. **[322C.0805] NONCOMPLYING NAME OF FOREIGN LIMITED**
53.14 **LIABILITY COMPANY.**

53.15 Subdivision 1. **Noncomplying name.** A foreign limited liability company whose
53.16 name does not comply with section 322C.0108 may not obtain a certificate of authority
53.17 until it adopts, for the purpose of transacting business in this state, an alternate name
53.18 that complies with section 322C.0108. A foreign limited liability company that adopts
53.19 an alternate name under this subdivision and obtains a certificate of authority with the
53.20 alternate name need not comply with section 333.01. After obtaining a certificate of
53.21 authority with an alternate name, a foreign limited liability company shall transact business
53.22 in this state under the alternate name unless the company is authorized under section
53.23 333.01 to transact business in this state under another name. A foreign limited liability
53.24 company may adopt an alternate name even if its name complies with section 322C.0108.

53.25 Subd. 2. **Change in name.** If a foreign limited liability company authorized to
53.26 transact business in this state changes its name to one that does not comply with section
53.27 322C.0108, it may not thereafter transact business in this state until it complies with
53.28 subdivision 1 and obtains an amended certificate of authority.

53.29 Sec. 60. **[322C.0806] REVOCATION OF CERTIFICATE OF AUTHORITY.**

53.30 (a) The certificate of authority of a foreign limited liability company to transact
53.31 business in this state shall be revoked by the secretary of state if it fails:

53.32 (1) to pay any fee due under the provisions of this chapter;

54.1 (2) to designate a registered agent when a vacancy occurs in that office, or when the
54.2 appointed registered agent resigns or becomes disqualified or incapacitated;

54.3 (3) to file certificates of merger or name change, as required in section 322C.0805,
54.4 subdivision 2; or

54.5 (4) to file an annual renewal.

54.6 (b) On finding that a default has occurred under paragraph (a), clauses (1) to (3), the
54.7 secretary of state shall give notice by mail to the foreign limited liability company, at its
54.8 registered office in this state, that the default exists and that its certificate of authority will
54.9 be revoked unless the default shall be cured within 30 days after the mailing of the notice.

54.10 (c)(1) The secretary of state shall revoke the certificate of authority of a foreign
54.11 limited liability company that is in default under paragraph (a), clause (4), for failure to
54.12 file an annual renewal under section 5.34.

54.13 (2) The secretary of state shall revoke the certificate of authority of a foreign limited
54.14 liability company that is in default under paragraph (a), clauses (1) to (3), if the default is
54.15 not cured within 30 days after mailing the notice under paragraph (b); provided that for
54.16 good cause shown the secretary of state may extend the 30-day period from time to time,
54.17 but in no event may the aggregate of all extensions granted exceed 180 days or the period
54.18 of time of any applicable extension granted by the Department of Revenue for filing the
54.19 income tax return of the corporation, whichever is greater.

54.20 (d)(1) Upon revoking the certificate of authority of a foreign limited liability
54.21 company because of a default under paragraph (a), clauses (1) to (3), the secretary of
54.22 state shall:

54.23 (i) issue a certificate of revocation; and

54.24 (ii) mail to the foreign limited liability company, at its registered office in this state,
54.25 a notice of the revocation.

54.26 (2) Upon revoking the certificate of authority of a foreign limited liability company
54.27 because of a default under paragraph (a), clause (4), the secretary of state shall issue a
54.28 certificate of revocation, and the certificate must be filed in the Office of the Secretary of
54.29 State. No further notice to the foreign limited liability company is required.

54.30 (3) The secretary of state shall also make the names of the revoked foreign limited
54.31 liability companies available in an electronic format.

54.32 (e) Upon the issuance of such certificate of revocation, the authority of the foreign
54.33 limited liability company to transact business in this state shall cease.

54.34 Sec. 61. **[322C.0807] WITHDRAWAL OF FOREIGN LIMITED LIABILITY**
54.35 **COMPANY.**

55.1 (a) If a foreign limited liability company holding a certificate of authority desires to
55.2 withdraw, it shall file with the secretary of state an application for withdrawal.

55.3 (b) The application for withdrawal shall set forth:

55.4 (1) the name of the foreign limited liability company corporation and the state or
55.5 country under the laws of which it is organized;

55.6 (2) that it has no property located in this state and has ceased to transact business
55.7 therein;

55.8 (3) that its governing body has duly determined to surrender its authority to transact
55.9 business in this state;

55.10 (4) that it revokes the authority of its registered agent in this state to accept service
55.11 of process;

55.12 (5) the address to which the secretary of state shall mail a copy of any process against
55.13 the foreign limited liability company that may be served upon the secretary of state;

55.14 (6) that it will pay to the commissioner of management and budget the amount of
55.15 any additional license fees properly found by the secretary of state to be then due from
55.16 such foreign limited liability company; and

55.17 (7) additional information required or demanded to enable the secretary of state
55.18 to determine the additional license fees, if any, payable by the foreign limited liability
55.19 company.

55.20 (c) The application for withdrawal shall be executed on behalf of the foreign limited
55.21 liability company pursuant to section 322C.0203.

55.22 (d) The application for withdrawal shall be delivered to the secretary of state. Upon
55.23 receiving and examining the same, and upon finding that it conforms to the provisions of
55.24 this chapter, the secretary of state shall, when all license fees, filing fees, and other charges
55.25 have been paid as required by law, file the same and shall issue and record a certificate
55.26 of withdrawal. Upon the issuance of the certificate, the authority of the foreign limited
55.27 liability company to transact business in this state shall cease.

55.28 (e) The filing with the secretary of state by the corporation of a certificate of
55.29 dissolution, or a certificate of merger if the foreign limited liability company is not the
55.30 surviving limited liability company from the proper officer of the state or country under
55.31 the laws of which the foreign limited liability company is organized, constitutes a valid
55.32 application of withdrawal and the authority of the foreign limited liability company to
55.33 transact business in this state shall cease upon filing of the certificate.

55.34 **Sec. 62. [322C.0808] EFFECT OF FAILURE TO HAVE CERTIFICATE OF**
55.35 **AUTHORITY.**

57.1 (1) the member first makes a demand on the other members in a member-managed
57.2 limited liability company, the managers of a manager-managed limited liability company,
57.3 or the board of governors of a board-managed limited liability company requesting that
57.4 they cause the company to bring an action to enforce the right, and the member or board
57.5 does not bring the action within a reasonable time; or

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

57.7 Sec. 66. **[322C.0903] PROPER PLAINTIFF.**

57.8 Subdivision 1. Member status required. Except as otherwise provided in
57.9 subdivision 2, a derivative action under section 322C.0902 may be maintained only by a
57.10 person that is a member at the time the action is commenced and remains a member
57.11 while the action continues.

57.12 Subd. 2. Effect of plaintiff death. If the sole plaintiff in a derivative action dies
57.13 while the action is pending, the court may permit another member of the limited liability
57.14 company to be substituted as plaintiff.

57.15 Sec. 67. **[322C.0904] PLEADING.**

57.16 In a derivative action under section 322C.0902, the complaint must state with
57.17 particularity:

57.18 (1) the date and content of the plaintiff's demand and the response to the demand by
57.19 the other members, managers, or board of governors; or

57.20 (2) if a demand has not been made, the reasons a demand under section 322C.0902,
57.21 clause (1), would be futile.

57.22 Sec. 68. **[322C.0905] SPECIAL LITIGATION COMMITTEE.**

57.23 Subdivision 1. Committee authorization. If a limited liability company is named
57.24 as or made a party in a derivative proceeding, the company may appoint a special
57.25 litigation committee to investigate the claims asserted in the proceeding and determine
57.26 whether pursuing the action is in the best interests of the company. If the company
57.27 appoints a special litigation committee, on motion by the committee made in the name
57.28 of the company, except for good cause shown, the court shall stay discovery for the time
57.29 reasonably necessary to permit the committee to make its investigation. This subdivision
57.30 does not prevent the court from enforcing a person's right to information under section
57.31 322C.0410 or, for good cause shown, granting extraordinary relief in the form of a
57.32 temporary restraining order or preliminary injunction.

58.1 Subd. 2. **Committee composition.** A special litigation committee may be composed
58.2 of one or more disinterested and independent individuals, who may be members.

58.3 Subd. 3. **Requirements for appointment of committee.** A special litigation
58.4 committee may be appointed:

58.5 (1) in a member-managed limited liability company:

58.6 (i) by the consent of a majority of the members not named as defendants or plaintiffs
58.7 in the proceeding; and

58.8 (ii) if all members are named as defendants or plaintiffs in the proceeding, by a
58.9 majority of the members named as defendants;

58.10 (2) in a manager-managed limited liability company:

58.11 (i) by a majority of the managers not named as defendants or plaintiffs in the
58.12 proceeding; and

58.13 (ii) if all managers are named as defendants or plaintiffs in the proceeding, by a
58.14 majority of the managers named as defendants; and

58.15 (3) in a board-managed limited liability company:

58.16 (i) by a majority of governors not named as defendants or plaintiffs in the
58.17 proceeding; and

58.18 (ii) if all governors are named as defendants or plaintiffs in the proceeding, by a
58.19 majority of the governors named as defendants.

58.20 Subd. 4. **Determinations of committee.** After appropriate investigation, a special
58.21 litigation committee may determine that it is in the best interests of the limited liability
58.22 company that the proceeding:

58.23 (1) continue under the control of the plaintiff;

58.24 (2) continue under the control of the committee;

58.25 (3) be settled on terms approved by the committee; or

58.26 (4) be dismissed.

58.27 Subd. 5. **Committee procedures.** After making a determination under subdivision
58.28 4, a special litigation committee shall file with the court a statement of its determination
58.29 and its report supporting its determination, giving notice to the plaintiff. The court shall
58.30 determine whether the members of the committee were disinterested and independent
58.31 and whether the committee conducted its investigation and made its recommendation
58.32 in good faith, independently, and with reasonable care, with the committee having the
58.33 burden of proof. If the court finds that the members of the committee were disinterested
58.34 and independent and that the committee acted in good faith, independently, and with
58.35 reasonable care, the court shall enforce the determination of the committee. Otherwise,

59.1 the court shall dissolve the stay of discovery entered under subdivision 1 and allow the
59.2 action to proceed under the direction of the plaintiff.

59.3 Sec. 69. **[322C.0906] PROCEEDS AND EXPENSES.**

59.4 Subdivision 1. **Ownership of proceeds.** Except as otherwise provided in
59.5 subdivision 2:

59.6 (1) any proceeds or other benefits of a derivative action under section 322C.0902,
59.7 whether by judgment, compromise, or settlement, belong to the limited liability company
59.8 and not to the plaintiff; and

59.9 (2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately
59.10 to the company.

59.11 Subd. 2. **Expenses awarded.** If a derivative action under section 322C.0902 is
59.12 successful in whole or in part, the court may award the plaintiff reasonable expenses,
59.13 including reasonable attorney fees and costs, from the recovery of the limited liability
59.14 company.

59.15 **MERGER, CONVERSION, AND DOMESTICATION**

59.16 Sec. 70. **[322C.1001] DEFINITIONS.**

59.17 Subdivision 1. **Scope.** For the purposes of sections 322C.1001 to 322C.1015, the
59.18 terms defined in this section have the meanings given them.

59.19 Subd. 2. **Constituent limited liability company.** "Constituent limited liability
59.20 company" means a constituent organization that is a limited liability company.

59.21 Subd. 3. **Constituent organization.** "Constituent organization" means an
59.22 organization that is party to a merger or exchange.

59.23 Subd. 4. **Converted organization.** "Converted organization" means the
59.24 organization into which a converting organization converts pursuant to sections 322C.1006
59.25 to 322C.1010.

59.26 Subd. 5. **Converting limited liability company.** "Converting limited liability
59.27 company" means a converting organization that is a limited liability company.

59.28 Subd. 6. **Converting organization.** "Converting organization" means an
59.29 organization that converts into another organization pursuant to section 322C.1007.

59.30 Subd. 7. **Domesticated company.** "Domesticated company" means the company
59.31 that exists after a domesticating foreign limited liability company or limited liability
59.32 company effects a domestication pursuant to sections 322C.1010 to 322C.1014.

59.33 Subd. 8. **Domesticating company.** "Domesticating company" means the company
59.34 that effects a domestication pursuant to sections 322C.1010 to 322C.1014.

60.1 Subd. 9. **Governing statute.** "Governing statute" means the statute that governs
60.2 an organization's internal affairs.

60.3 Subd. 10. **Organization.** "Organization" means a general partnership, including
60.4 a limited liability partnership, limited partnership, including a limited liability limited
60.5 partnership, limited liability company, business trust, corporation, or any other person
60.6 having a governing statute. The term includes a domestic or foreign organization
60.7 regardless of whether organized for profit.

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

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

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

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

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

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

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

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

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

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

60.32 Subd. 13. **Surviving organization.** "Surviving organization" means an organization
60.33 into which one or more other organizations are merged whether the organization preexisted
60.34 the merger or was created by the merger.

60.35 Sec. 71. **[322C.1002] MERGER; EXCHANGE.**

61.1 Subdivision 1. Prerequisites for merger. A limited liability company may merge
61.2 with one or more other constituent organizations pursuant to this section, sections
61.3 322C.1003 to 322C.1005, and a plan of merger if:

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

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

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

61.9 Subd. 2. Prerequisites for exchange. A limited liability company may engage in
61.10 an exchange with one or more other constituent organizations pursuant to this section by
61.11 which one of the constituent organizations acquires all of the ownership interests of one or
61.12 more classes or series of another constituent organization pursuant to this section, sections
61.13 322C.1003 to 322C.1005, and a plan of exchange if:

61.14 (1) the governing statute of each of the other constituent organizations authorizes
61.15 the exchange;

61.16 (2) the exchange is not prohibited by the law of a jurisdiction that enacted any of the
61.17 governing statutes; and

61.18 (3) each of the other constituent organizations complies with its governing statute in
61.19 effecting the exchange.

61.20 Subd. 3. Plan of merger or exchange. A plan of merger or exchange must be in a
61.21 record and must include:

61.22 (1) the name and form of each constituent organization and:

61.23 (i) in the case of a merger, the name and form of the surviving organization and, if
61.24 the surviving organization is to be created by the merger, a statement to that effect; and

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

61.26 (2)(i) in the case of a merger, the terms and conditions of the merger, including the
61.27 manner and basis for converting the interests in each constituent organization into any
61.28 combination of money, interests in the surviving organization, and other consideration; and

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

61.33 (3) in the case of a merger, if the surviving organization is to be created by the merger,
61.34 the surviving organization's organizational documents that are proposed to be in a record;

62.1 (4) in the case of a merger, if the surviving organization is not to be created by
62.2 the merger, any amendments to be made by the merger to the surviving organization's
62.3 organizational documents that are, or are proposed to be, in a record; and

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

62.6 Sec. 72. **[322C.1003] ACTION ON PLAN OF MERGER OR EXCHANGE BY**
62.7 **CONSTITUENT LIMITED LIABILITY COMPANY.**

62.8 Subdivision 1. **Member consent required.** Subject to section 322C.1015, a plan
62.9 of merger or exchange must be consented to by all the members of a constituent limited
62.10 liability company.

62.11 Subd. 2. **Amendment of plan or abandonment of merger or exchange.** Subject to
62.12 section 322C.1015 and any contractual rights, after a merger or exchange is approved, and
62.13 at any time before the merger or exchange becomes effective according to this chapter,
62.14 a constituent limited liability company may amend the plan or abandon the merger or
62.15 exchange:

62.16 (1) as provided in the plan; or

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

62.19 Sec. 73. **[322C.1004] FILINGS REQUIRED FOR MERGER OR EXCHANGE;**
62.20 **EFFECTIVE DATE AND TIME.**

62.21 Subdivision 1. **Articles of merger or exchange.** After each constituent organization
62.22 has approved a merger or exchange, articles of merger or exchange must be signed on
62.23 behalf of:

62.24 (1) each constituent limited liability company, as provided in section 322C.0203,
62.25 subdivision 1; and

62.26 (2) each other constituent organization, as provided in its governing statute.

62.27 Subd. 2. **Contents of articles of merger.** Articles of merger under this section
62.28 must include:

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

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

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

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- 63.1 (4) if the surviving organization is to be created by the merger:
63.2 (i) if it will be a limited liability company, the company's articles of organization; or
63.3 (ii) if it will be an organization other than a limited liability company, the
63.4 organizational document that creates the organization that is in a public record;
63.5 (5) if the surviving organization preexists the merger, any amendments provided
63.6 for in the plan of merger for the organizational document that created the organization
63.7 that are in a public record;
63.8 (6) a statement as to each constituent organization that the merger was approved as
63.9 required by the organization's governing statute;
63.10 (7) if the surviving organization is a foreign organization not authorized to transact
63.11 business in this state, the street address of an office that the secretary of state may use for
63.12 the purposes of section 322C.1005, subdivision 2; and
63.13 (8) any additional information required by the governing statute of any constituent
63.14 organization.
- 63.15 **Subd. 3. Contents of articles of exchange.** Articles of exchange under this section
63.16 must include:
63.17 (1) the name and form of each constituent organization and the jurisdiction of its
63.18 governing statute;
63.19 (2) the manner and basis of exchanging the ownership interests to be acquired for
63.20 securities of, or other ownership interests in, the acquiring organization or any other
63.21 organization or, in whole or part, for money or other property;
63.22 (3) the date the exchange is effective under the governing statute of the acquiring
63.23 organization;
63.24 (4) a statement as to each constituent organization that the exchange was approved
63.25 as required by the organization's governing statute; and
63.26 (5) any additional information required by the governing statute of any constituent
63.27 organization.
- 63.28 **Subd. 4. Delivery of articles of merger or exchange.** Each constituent limited
63.29 liability company shall file the articles of merger, together with a total fee of \$60, with the
63.30 Office of the Secretary of State.
- 63.31 **Subd. 5. Effective date and time of merger or exchange.** (a) A merger becomes
63.32 effective under sections 322C.1001 to 322C.1015:
63.33 (1) if the surviving organization is a limited liability company, upon the later of:
63.34 (i) compliance with subdivision 4; or
63.35 (ii) subject to section 322C.0205, subdivision 3, such effective time as is specified in
63.36 the articles of merger; or

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

64.3 (b) An exchange becomes effective under sections 322C.1001 to 322C.1015 upon
64.4 the later of:

64.5 (1) compliance with subdivision 4; or

64.6 (2) subject to section 322C.0205, subdivision 3, such effective time as is specified in
64.7 the articles of exchange.

64.8 Sec. 74. **[322C.1005] EFFECT OF MERGER.**

64.9 Subdivision 1. Effect on constituent organizations. When a merger becomes
64.10 effective:

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

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

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

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

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

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

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

64.26 (8) except as otherwise agreed, if a constituent limited liability company ceases
64.27 to exist, the merger does not dissolve the limited liability company for the purposes of
64.28 sections 322C.0701 to 322C.0707;

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

64.30 (i) if it is a limited liability company, the articles of organization become effective; or

64.31 (ii) if it is an organization other than a limited liability company, the organizational
64.32 document that creates the organization becomes effective; and

64.33 (10) if the surviving organization preexisted the merger, any amendments provided
64.34 for in the articles of merger or the organizational document that created the organization
64.35 become effective.

65.1 Subd. 2. **Foreign organization.** A surviving organization that is a foreign
65.2 organization consents to the jurisdiction of the courts of this state to enforce any debt,
65.3 obligation, or other liability owed by a constituent organization if before the merger the
65.4 constituent organization was subject to suit in this state on the debt, obligation, or other
65.5 liability. A surviving organization that is a foreign organization and not authorized
65.6 to transact business in this state appoints the secretary of state as its agent for service
65.7 of process for the purposes of enforcing a debt, obligation, or other liability under this
65.8 subdivision. Service on the secretary of state under this subdivision must be made in
65.9 the same manner and has the same consequences as in section 322C.0116, subdivisions
65.10 3 and 4.

65.11 Sec. 75. **[322C.1006] EFFECT OF EXCHANGE.**

65.12 When an exchange becomes effective, the membership interests in a limited liability
65.13 company to be exchanged under the terms of the plan are considered to be exchanged.
65.14 The members owning those membership interests are entitled only to the ownership
65.15 interests, securities, money, or other property into which those membership interests have
65.16 been converted or for which those membership interests have been exchanged according
65.17 to the plan.

65.18 Sec. 76. **[322C.1007] CONVERSION.**

65.19 Subdivision 1. **Conversion requirements.** An organization other than a limited
65.20 liability company, a foreign limited liability company, a nonprofit corporation, or an
65.21 organization owning assets irrevocably dedicated to a charitable purpose, may convert to a
65.22 limited liability company, and a limited liability company may convert to an organization
65.23 other than a foreign limited liability company pursuant to this section, sections 322C.1008
65.24 to 322C.1010, and a plan of conversion if:

- 65.25 (1) the other organization's governing statute authorizes the conversion;
65.26 (2) the conversion is not prohibited by the law of the jurisdiction that enacted the
65.27 other organization's governing statute or other law of this state; and
65.28 (3) the other organization complies with its governing statute in effecting the
65.29 conversion.

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

- 65.32 (1) the name and form of the organization before conversion;
65.33 (2) the name and form of the organization after conversion;

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

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

66.6 Sec. 77. **[322C.1008] ACTION ON PLAN OF CONVERSION BY CONVERTING**
66.7 **LIMITED LIABILITY COMPANY.**

66.8 Subdivision 1. Member consent required. Subject to section 322C.1015, a plan
66.9 of conversion must be consented to by all the members of a converting limited liability
66.10 company.

66.11 Subd. 2. Amendment of plan or abandonment of conversion. Subject to section
66.12 322C.1015 and any contractual rights, after a conversion is approved, and at any time
66.13 before articles of conversion are delivered to the secretary of state for filing under section
66.14 322C.1009, a converting limited liability company may amend the plan or abandon the
66.15 conversion:

66.16 (1) as provided in the plan; or

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

66.19 Sec. 78. **[322C.1009] FILINGS REQUIRED FOR CONVERSION; EFFECTIVE**
66.20 **DATE AND TIME.**

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

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

66.25 (i) a statement that the limited liability company has been converted into another
66.26 organization;

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

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

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

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

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

67.4 (2) if the converting organization is not a converting limited liability company, the
67.5 converting organization shall file with the secretary of state articles of organization, which
67.6 must include, in addition to the information required by section 322C.0201, subdivision 2:

67.7 (i) a statement that the converted organization was converted from another
67.8 organization;

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

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

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

67.14 (1) if the converted organization is a limited liability company, when the articles
67.15 of organization takes effect; and

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

67.18 Sec. 79. **[322C.1010] EFFECT OF CONVERSION.**

67.19 Subdivision 1. **Same entity.** An organization that has been converted pursuant to
67.20 sections 322C.1007 to 322C.1009 is for all purposes the same entity that existed before
67.21 the conversion.

67.22 Subd. 2. **Effect on converting organization.** When a conversion takes effect:

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

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

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

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

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

67.34 (6) except as otherwise agreed, the conversion does not dissolve a converting limited
67.35 liability company for the purposes of sections 322C.0701 to 322C.0707.

68.1 Subd. 3. **Foreign organization.** A converted organization that is a foreign
68.2 organization consents to the jurisdiction of the courts of this state to enforce any debt,
68.3 obligation, or other liability for which the converting limited liability company is liable
68.4 if, before the conversion, the converting limited liability company was subject to suit in
68.5 this state on the debt, obligation, or other liability. A converted organization that is a
68.6 foreign organization and not authorized to transact business in this state appoints the
68.7 secretary of state as its agent for service of process for purposes of enforcing a debt,
68.8 obligation, or other liability under this subdivision. Service on the secretary of state under
68.9 this subdivision must be made in the same manner and has the same consequences as in
68.10 section 322C.0116, subdivisions 3 and 4.

68.11 Sec. 80. **[322C.1011] DOMESTICATION.**

68.12 Subdivision 1. **Foreign limited liability company.** A foreign limited liability
68.13 company may become a limited liability company pursuant to this section, sections
68.14 322C.1011 to 322C.1013, and a plan of domestication if:

68.15 (1) the foreign limited liability company's governing statute authorizes the
68.16 domestication;

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

68.19 (3) the foreign limited liability company complies with its governing statute in
68.20 effecting the domestication.

68.21 Subd. 2. **Domestic limited liability company.** A limited liability company may
68.22 become a foreign limited liability company pursuant to this section, sections 322C.1011 to
68.23 322C.1013, and a plan of domestication if:

68.24 (1) the foreign limited liability company's governing statute authorizes the
68.25 domestication;

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

68.28 (3) the foreign limited liability company complies with its governing statute in
68.29 effecting the domestication.

68.30 Subd. 3. **Plan of domestication.** A plan of domestication must be in a record
68.31 and must include:

68.32 (1) the name of the domesticating company before domestication and the jurisdiction
68.33 of its governing statute;

68.34 (2) the name of the domesticated company after domestication and the jurisdiction
68.35 of its governing statute;

69.1 (3) the terms and conditions of the domestication, including the manner and basis
69.2 for converting interests in the domesticating company into any combination of money,
69.3 interests in the domesticated company, and other consideration; and

69.4 (4) the organizational documents of the domesticated company that are, or are
69.5 proposed to be, in a record.

69.6 Sec. 81. **[322C.1012] ACTION ON PLAN OF DOMESTICATION BY**
69.7 **DOMESTICATING LIMITED LIABILITY COMPANY.**

69.8 Subdivision 1. **Consent required.** A plan of domestication must be consented to:

69.9 (1) by all the members, subject to section 322C.1015, if the domesticating company
69.10 is a limited liability company; and

69.11 (2) as provided in the domesticating company's governing statute, if the company is
69.12 a foreign limited liability company.

69.13 Subd. 2. **Amendment of plan or abandonment of domestication.** Subject to any
69.14 contractual rights, after a domestication is approved, and at any time before articles of
69.15 domestication are filed with the secretary of state under section 322C.1013, a domesticating
69.16 limited liability company may amend the plan or abandon the domestication:

69.17 (1) as provided in the plan; or

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

69.20 Sec. 82. **[322C.1013] FILINGS REQUIRED FOR DOMESTICATION;**
69.21 **EFFECTIVE DATE.**

69.22 Subdivision 1. **Articles of domestication.** After a plan of domestication is approved,
69.23 a domesticating company shall file with the secretary of state articles of domestication,
69.24 together with a total fee of \$60, which articles of domestication must include:

69.25 (1) a statement, as the case may be, that the company has been domesticated from or
69.26 into another jurisdiction;

69.27 (2) the name of the domesticating company and the jurisdiction of its governing
69.28 statute;

69.29 (3) the name of the domesticated company and the jurisdiction of its governing
69.30 statute;

69.31 (4) the date the domestication is effective under the governing statute of the
69.32 domesticated company;

69.33 (5) if the domesticating company was a limited liability company, a statement that
69.34 the domestication was approved as required by this chapter;

70.1 (6) if the domesticating company was a foreign limited liability company, a
70.2 statement that the domestication was approved as required by the governing statute of
70.3 the other jurisdiction; and

70.4 (7) if the domesticated company was a foreign limited liability company not
70.5 authorized to transact business in this state, the street address of an office that the secretary
70.6 of state may use for the purposes of section 322C.1014, subdivision 2.

70.7 Subd. 2. **Effective date of domestication.** A domestication becomes effective:

70.8 (1) when the articles of organization takes effect, if the domesticated company is
70.9 a limited liability company; and

70.10 (2) according to the governing statute of the domesticated company, if the
70.11 domesticated organization is a foreign limited liability company.

70.12 Sec. 83. **[322C.1014] EFFECT OF DOMESTICATION.**

70.13 Subdivision 1. **Effect on domesticating company.** When a domestication takes
70.14 effect:

70.15 (1) the domesticated company is for all purposes the company that existed before
70.16 the domestication;

70.17 (2) all property owned by the domesticating company remains vested in the
70.18 domesticated company;

70.19 (3) all debts, obligations, or other liabilities of the domesticating company continue
70.20 as debts, obligations, or other liabilities of the domesticated company;

70.21 (4) an action or proceeding pending by or against a domesticating company may be
70.22 continued as if the domestication had not occurred;

70.23 (5) except as prohibited by other law, all of the rights, privileges, immunities, powers,
70.24 and purposes of the domesticating company remain vested in the domesticated company;

70.25 (6) except as otherwise provided in the plan of domestication, the terms and
70.26 conditions of the plan of domestication take effect; and

70.27 (7) except as otherwise agreed, the domestication does not dissolve a domesticating
70.28 limited liability company for the purposes of sections 322C.0701 to 322C.0707.

70.29 Subd. 2. **Foreign company.** A domesticated company that is a foreign limited
70.30 liability company consents to the jurisdiction of the courts of this state to enforce any
70.31 debt, obligation, or other liability owed by the domesticating company if, before the
70.32 domestication, the domesticating company was subject to suit in this state on the debt,
70.33 obligation, or other liability. A domesticated company that is a foreign limited liability
70.34 company and not authorized to transact business in this state appoints the secretary of state
70.35 as its agent for service of process for purposes of enforcing a debt, obligation, or other

71.1 liability under this subdivision. Service on the secretary of state under this subdivision
71.2 must be made in the same manner and has the same consequences as in section 322C.0116,
71.3 subdivisions 3 and 4.

71.4 Subd. 3. **Foreign jurisdiction.** If a limited liability company has adopted and
71.5 approved a plan of domestication under section 322C.1011 providing for the company to
71.6 be domesticated in a foreign jurisdiction, a statement surrendering the company's articles
71.7 of organization must be filed with the secretary of state setting forth:

71.8 (1) the name of the company;

71.9 (2) a statement that the articles of organization is being surrendered in connection
71.10 with the domestication of the company in a foreign jurisdiction;

71.11 (3) a statement that the domestication was approved as required by this chapter; and

71.12 (4) the jurisdiction of formation of the domesticated foreign limited liability
71.13 company.

71.14 Sec. 84. **[322C.1015] RESTRICTIONS ON APPROVAL OF MERGERS,**
71.15 **EXCHANGES, CONVERSIONS, AND DOMESTICATIONS.**

71.16 Subdivision 1. **Personality liability of member.** If a member of a constituent,
71.17 converting, or domesticating limited liability company will have personal liability with
71.18 respect to a surviving, constituent, converted, or domesticated organization, approval or
71.19 amendment of a plan of merger, exchange, conversion, or domestication is ineffective
71.20 without the consent of the member, unless:

71.21 (1) the company's operating agreement provides for approval of a merger, exchange,
71.22 conversion, or domestication with the consent of fewer than all the members; and

71.23 (2) the member has consented to the provision of the operating agreement.

71.24 Subd. 2. **Consent.** A member does not give the consent required by subdivision 1
71.25 merely by consenting to a provision of the operating agreement that permits the operating
71.26 agreement to be amended with the consent of fewer than all the members.

71.27 **MISCELLANEOUS PROVISIONS**

71.28 Sec. 85. **[322C.1101] UNIFORMITY OF APPLICATION AND**
71.29 **CONSTRUCTION.**

71.30 In applying and construing this uniform act, consideration must be given to the
71.31 need to promote uniformity of the law with respect to its subject matter among states
71.32 that enact it.

72.1 Sec. 86. **[322C.1102] RELATION TO ELECTRONIC SIGNATURES IN**
72.2 **GLOBAL AND NATIONAL COMMERCE ACT.**

72.3 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
72.4 Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but
72.5 does not modify, limit, or supersede section 101(c) of that act, United States Code, title 15,
72.6 section 7001(c), or authorize electronic delivery of any of the notices described in section
72.7 103(b) of that act, United States Code, title 15, section 7003(b).

72.8 Sec. 87. **[322C.1103] SAVINGS CLAUSE.**

72.9 This chapter does not affect an action commenced, proceeding brought, or right
72.10 accrued before this chapter takes effect.

72.11 Sec. 88. **[322C.1104] APPLICATION TO EXISTING RELATIONSHIPS.**

72.12 Subdivision 1. **Before effective date.** Before January 1, 2015, this chapter governs
72.13 only:

72.14 (1) a limited liability company formed on or after August 1, 2012; and

72.15 (2) except as otherwise provided in subdivision 3, a limited liability company
72.16 formed before August 1, 2012, which elects, in the manner provided in its operating
72.17 agreement or by law for amending the operating agreement, to be subject to this chapter.

72.18 Subd. 2. **After effective date.** Except as otherwise provided in subdivision 3, on
72.19 and after January 1, 2015, this chapter governs all limited liability companies.

72.20 Subd. 3. **Application to existing company.** For the purposes of applying this
72.21 chapter to a limited liability company formed before August 1, 2012:

72.22 (1) the company's articles of organization are deemed to be the company's articles
72.23 of organization; and

72.24 (2) for the purposes of applying section 322C.0102, subdivision 10, and subject
72.25 to section 322C.0112, subdivision 4, language in the articles of organization, bylaws,
72.26 operating agreement, and/or member control agreement of a limited liability company
72.27 formed before August 1, 2012, that becomes subject to this chapter will operate as if
72.28 that language were in the operating agreement of the limited liability company when it
72.29 becomes subject to this chapter.

72.30 Sec. 89. **[322C.1105] STATE INTERESTED IN PROCEEDING.**

72.31 If it appears at any stage of a proceeding in a court in this state that the state is, or is
72.32 likely to be, interested in the proceeding or that it is a matter of general public interest,
72.33 the court shall order that a copy of the complaint or petition be served upon the attorney

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73.1 general in the same manner prescribed for serving a summons in a civil action. The
73.2 attorney general shall intervene in a proceeding when the attorney general determines that
73.3 the public interest requires it, whether or not the attorney general has been served.

73.4 Sec. 90. **REPEALER; EFFECTIVE DATE.**

73.5 Minnesota Statutes 2010, sections 322B.01; 322B.02; 322B.03, subdivisions 1,
73.6 2, 3, 6, 6a, 7, 8, 10, 11, 12, 13, 14, 15, 17, 17a, 17b, 18, 19, 19a, 20, 21, 22, 23, 24,
73.7 25, 26, 27, 28, 29, 30, 31, 31a, 32, 33, 34, 35, 36, 36a, 37, 38, 39, 40, 41, 41a, 42,
73.8 43, 44, 45, 45a, 46, 47, 48, 49, 50, and 51; 322B.04; 322B.10; 322B.105; 322B.11;
73.9 322B.115; 322B.12, subdivisions 1, 2, 3, 4, and 5; 322B.125; 322B.13; 322B.135;
73.10 322B.14; 322B.145; 322B.15; 322B.155; 322B.16; 322B.165; 322B.17; 322B.175;
73.11 322B.18; 322B.20; 322B.21; 322B.22; 322B.23; 322B.30; 322B.303; 322B.306; 322B.31;
73.12 322B.313; 322B.316; 322B.32; 322B.323; 322B.326; 322B.33; 322B.333; 322B.336;
73.13 322B.34; 322B.343; 322B.346; 322B.348; 322B.35; 322B.353; 322B.356; 322B.36;
73.14 322B.363, subdivisions 1, 2, 3, 4, 5, 6, and 7; 322B.366, subdivision 1; 322B.37;
73.15 322B.373; 322B.376; 322B.38; 322B.383; 322B.386; 322B.40; 322B.41; 322B.42;
73.16 322B.43; 322B.50; 322B.51; 322B.52; 322B.53; 322B.54; 322B.55; 322B.56; 322B.60;
73.17 322B.603; 322B.606; 322B.61; 322B.613; 322B.616; 322B.62; 322B.623; 322B.626;
73.18 322B.63; 322B.633; 322B.636; 322B.64; 322B.643; 322B.646; 322B.65; 322B.653;
73.19 322B.656; 322B.66; 322B.663; 322B.666; 322B.67; 322B.673; 322B.676; 322B.679;
73.20 322B.68; 322B.683; 322B.686; 322B.689; 322B.69; 322B.693; 322B.696; 322B.699;
73.21 322B.70; 322B.71; 322B.72; 322B.73; 322B.74; 322B.75; 322B.755; 322B.76; 322B.77;
73.22 322B.78; 322B.80; 322B.803; 322B.806; 322B.81; 322B.813; 322B.816, subdivisions 1,
73.23 2, 4, 5, and 6; 322B.82; 322B.823; 322B.826; 322B.83; 322B.833; 322B.836; 322B.84;
73.24 322B.843; 322B.846; 322B.85; 322B.853; 322B.856; 322B.86; 322B.863; 322B.866;
73.25 322B.87; 322B.873, subdivisions 1 and 4; 322B.876, subdivision 1; 322B.88; 322B.883;
73.26 322B.90; 322B.905; 322B.91, subdivisions 1 and 2; 322B.915; 322B.92; 322B.925;
73.27 322B.93; 322B.935; 322B.94; 322B.945; 322B.95; 322B.955; 322B.960, subdivisions 1,
73.28 4, and 5; and 322B.975, are repealed effective January 1, 2015.

73.29 Sec. 91. **EFFECTIVE DATE.**

73.30 Except as otherwise provided, this article is effective August 1, 2012.

73.31 **ARTICLE 2**

73.32 **CONFORMING CHANGES**

73.33 Section 1. Minnesota Statutes 2010, section 48A.03, subdivision 4, is amended to read:

74.1 Subd. 4. **Requirements for consolidated or merged companies.** When two or
74.2 more trust companies have been or are consolidated under sections 49.34 to 49.41, or, in
74.3 the case of a limited liability company, that has been or is merged under sections 322B.70
74.4 to 322B.75 or 322C.1001 to 322C.1005 and 322C.1015, the capital of the consolidated
74.5 or merged trust company is considered substituted for the capital of the several trust
74.6 companies entering into the consolidation or merger, and the aggregate of the securities
74.7 of these trust companies on deposit with the commissioner of management and budget,
74.8 according to this section, must be increased or diminished accordingly.

74.9 Sec. 2. Minnesota Statutes 2010, section 181.970, subdivision 2, is amended to read:

74.10 Subd. 2. **Exception.** Subdivision 1 does not apply to:

74.11 (1) employees of the state or a municipality governed by section 3.736 or 466.07;

74.12 (2) employees who are subject to a contract or other agreement governing
74.13 indemnification rights;

74.14 (3) employees and employers who are governed by indemnification provisions under
74.15 section 302A.521, 317A.521, ~~or 322B.699~~, or 322C.0408, or similar laws of this state or
74.16 another state specifically governing indemnification of employees of business or nonprofit
74.17 corporations, limited liability companies, or other legal entities; or

74.18 (4) indemnification rights for a particular liability specifically governed by other law.

74.19 Sec. 3. Minnesota Statutes 2010, section 270C.721, is amended to read:

74.20 **270C.721 REVOCATION OF CERTIFICATES OF AUTHORITY TO DO**
74.21 **BUSINESS IN THIS STATE.**

74.22 When a foreign corporation authorized to do business in this state under chapter
74.23 303, or a foreign limited liability company or partnership authorized to do business in
74.24 this state under chapter 322B or 322C, fails to comply with a law administered by the
74.25 commissioner that imposes a tax, the commissioner may serve the secretary of state with
74.26 a certified copy of an order finding such failure to comply. The secretary of state, upon
74.27 receipt of the order, shall revoke the ~~certificate~~ of authority to do business in this state,
74.28 and shall reinstate the ~~certificate~~ entity under section 303.19 ~~or~~, 322B.960, subdivision 6, ~~2~~
74.29 or 322C.0706 only when the corporation or limited liability company or partnership has
74.30 obtained from the commissioner an order finding that the corporation or limited liability
74.31 company or partnership is in compliance with such law. An order requiring revocation
74.32 of a certificate shall not be issued unless the commissioner gives the corporation or
74.33 limited liability company or partnership 30 days' written notice of the proposed order,

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75.1 specifying the violations of law, and affording an opportunity to request a contested case
75.2 hearing under chapter 14.

75.3 Sec. 4. Minnesota Statutes 2010, section 273.124, subdivision 8, is amended to read:

75.4 Subd. 8. **Homestead owned by or leased to family farm corporation, joint farm**
75.5 **venture, limited liability company, or partnership.** (a) Each family farm corporation;
75.6 each joint family farm venture; and each limited liability company or partnership which
75.7 operates a family farm; is entitled to class 1b under section 273.13, subdivision 22,
75.8 paragraph (b), or class 2a assessment for one homestead occupied by a shareholder,
75.9 member, or partner thereof who is residing on the land, and actively engaged in farming of
75.10 the land owned by the family farm corporation, joint family farm venture, limited liability
75.11 company, or partnership. Homestead treatment applies even if legal title to the property is
75.12 in the name of the family farm corporation, joint family farm venture, limited liability
75.13 company, or partnership, and not in the name of the person residing on it.

75.14 "Family farm corporation," "family farm," and "partnership operating a family
75.15 farm" have the meanings given in section 500.24, except that the number of allowable
75.16 shareholders, members, or partners under this subdivision shall not exceed 12. "Limited
75.17 liability company" has the meaning contained in sections 322B.03, subdivision 28, or
75.18 322C.0102, subdivision 12, and 500.24, subdivision 2, paragraphs (l) and (m). "Joint
75.19 family farm venture" means a cooperative agreement among two or more farm enterprises
75.20 authorized to operate a family farm under section 500.24.

75.21 (b) In addition to property specified in paragraph (a), any other residences owned
75.22 by family farm corporations, joint family farm ventures, limited liability companies,
75.23 or partnerships described in paragraph (a) which are located on agricultural land and
75.24 occupied as homesteads by its shareholders, members, or partners who are actively
75.25 engaged in farming on behalf of that corporation, joint farm venture, limited liability
75.26 company, or partnership must also be assessed as class 2a property or as class 1b property
75.27 under section 273.13.

75.28 (c) Agricultural property that is owned by a member, partner, or shareholder of a
75.29 family farm corporation or joint family farm venture, limited liability company operating
75.30 a family farm, or by a partnership operating a family farm and leased to the family farm
75.31 corporation, limited liability company, partnership, or joint farm venture, as defined in
75.32 paragraph (a), is eligible for classification as class 1b or class 2a under section 273.13, if
75.33 the owner is actually residing on the property, and is actually engaged in farming the land
75.34 on behalf of that corporation, joint farm venture, limited liability company, or partnership.
75.35 This paragraph applies without regard to any legal possession rights of the family farm

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76.1 corporation, joint family farm venture, limited liability company, or partnership under
76.2 the lease.

76.3 (d) Agricultural property that (1) is owned by a family farm corporation, joint
76.4 farm venture, limited liability company, or partnership and (2) is contiguous to a class
76.5 2a homestead under section 273.13, subdivision 23, or if noncontiguous, is located in
76.6 the same township or city, or not farther than four townships or cities, or combination
76.7 thereof from a class 2a homestead, and the class 2a homestead is owned by one of the
76.8 shareholders, members, or partners; is entitled to receive the first tier homestead class rate
76.9 up to the first tier maximum market value on any remaining market value not received
76.10 on the shareholder's, member's, or partner's homestead class 2a property. The owner
76.11 must notify the county assessor by July 1 that a portion of the market value under this
76.12 subdivision may be eligible for homestead classification for the current assessment year,
76.13 for taxes payable in the following year.

76.14 Sec. 5. Minnesota Statutes 2010, section 290.01, subdivision 3b, is amended to read:

76.15 Subd. 3b. **Limited liability company.** For purposes of this chapter and chapter
76.16 289A, a limited liability company, ~~including a nonprofit limited liability company under~~
76.17 ~~section 322B.975,~~ that is formed under either the laws of this state or under similar laws
76.18 of another state, will be treated as an entity similar to its treatment for federal income
76.19 tax purposes.

76.20 **EFFECTIVE DATE.** This section is effective January 1, 2015.

76.21 Sec. 6. Minnesota Statutes 2010, section 302A.011, is amended by adding a
76.22 subdivision to read:

76.23 Subd. 67. **Converting corporation.** "Converting corporation" means a converting
76.24 organization that is a corporation.

76.25 Sec. 7. Minnesota Statutes 2010, section 302A.011, is amended by adding a
76.26 subdivision to read:

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

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

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

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

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- 77.1 (4) for a business trust, its agreement of trust and declaration of trust;
77.2 (5) for a domestic or foreign corporation for profit, its articles of incorporation,
77.3 bylaws, and other agreements among its shareholders that are authorized by its governing
77.4 statute, or comparable documents as provided in its governing statute; and
77.5 (6) for any other organization, the basic agreements or other documents that create
77.6 the organization and determine its internal governance and the relations among the persons
77.7 that own it, have an interest in it, or are members of it.

77.8 Sec. 8. Minnesota Statutes 2010, section 302A.011, is amended by adding a
77.9 subdivision to read:

77.10 Subd. 69. **Personal liability.** "Personal liability" means liability for a debt,
77.11 obligation, or other liability of an organization that is imposed on a person that co-owns,
77.12 has an interest in, or is a member of the organization.

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

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

77.20 Sec. 9. Minnesota Statutes 2010, section 302A.115, subdivision 1, is amended to read:

77.21 Subdivision 1. **Requirements; prohibitions.** The corporate name:

77.22 (a) Shall be in the English language or in any other language expressed in English
77.23 letters or characters;

77.24 (b) Shall contain the word "corporation," "incorporated," or "limited," or shall
77.25 contain an abbreviation of one or more of these words, or the word "company" or the
77.26 abbreviation "Co." if that word or abbreviation is not immediately preceded by the word
77.27 "and" or the character "&;

77.28 (c) Shall not contain a word or phrase that indicates or implies that it is incorporated
77.29 for a purpose other than a legal business purpose;

77.30 (d) Shall be distinguishable upon the records in the Office of the Secretary of
77.31 State from the name of each domestic corporation, limited partnership, limited liability
77.32 partnership, and limited liability company, whether profit or nonprofit, and each foreign
77.33 corporation, limited partnership, limited liability partnership, and limited liability company
77.34 on file, authorized or registered to do business in this state at the time of filing, whether

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78.1 profit or nonprofit, and each name the right to which is, at the time of incorporation,
78.2 reserved as provided for in sections 5.35, 302A.117, 321.0109, 322B.125, 322C.0109, or
78.3 333.001 to 333.54, unless there is filed with the articles one of the following:

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

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

78.12 (3) The applicant's affidavit that the domestic or foreign corporation, limited
78.13 partnership, or limited liability company with the name that is not distinguishable has
78.14 been incorporated or on file in this state for at least three years prior to the affidavit, if it
78.15 is a domestic corporation, limited partnership, or limited liability company, or has been
78.16 authorized or registered to do business in this state for at least three years prior to the
78.17 affidavit, if it is a foreign corporation, limited partnership, or limited liability company,
78.18 or that the holder of a name filed or registered with the secretary of state under sections
78.19 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit;
78.20 that the domestic or foreign corporation, limited partnership, or limited liability company
78.21 or holder has not during the three-year period before the affidavit filed any document with
78.22 the secretary of state; that the applicant has mailed written notice to the domestic or
78.23 foreign corporation, limited partnership, or limited liability company or the holder of a
78.24 name filed or registered with the secretary of state under sections 333.001 to 333.54 by
78.25 certified mail, return receipt requested, properly addressed to the registered office of the
78.26 domestic or foreign corporation or limited liability company or in care of the agent of the
78.27 limited partnership, or the address of the holder of a name filed or registered with the
78.28 secretary of state under sections 333.001 to 333.54, shown in the records of the secretary
78.29 of state, stating that the applicant intends to use a name that is not distinguishable and the
78.30 notice has been returned to the applicant as undeliverable to the addressee domestic or
78.31 foreign corporation, limited partnership, limited liability company, or holder of a name
78.32 filed or registered with the secretary of state under sections 333.001 to 333.54; that the
78.33 applicant, after diligent inquiry, has been unable to find any telephone listing for the
78.34 domestic or foreign corporation, limited partnership, or limited liability company with
78.35 the name that is not distinguishable in the county in which is located the registered office
78.36 of the domestic or foreign corporation, limited partnership, or limited liability company

79.1 shown in the records of the secretary of state or has been unable to find any telephone
79.2 listing for the holder of a name filed or registered with the secretary of state under sections
79.3 333.001 to 333.54 in the county in which is located the address of the holder shown in
79.4 the records of the secretary of state; and that the applicant has no knowledge that the
79.5 domestic or foreign corporation, limited partnership, limited liability company, or holder
79.6 of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is
79.7 currently engaged in business in this state.

79.8 Sec. 10. Minnesota Statutes 2010, section 302A.681, is amended to read:

79.9 **302A.681 CONVERSION OF CORPORATIONS AND LIMITED LIABILITY**
79.10 **COMPANIES.**

79.11 Subdivision 1. ~~Conversions authorized~~ Authorization. ~~A corporation may~~
79.12 ~~become a domestic limited liability company, and a domestic limited liability company~~
79.13 ~~may become a~~ An organization, other than a corporation, a foreign corporation, a nonprofit
79.14 corporation, or an organization owning assets irrevocably dedicated to a charitable
79.15 purpose, may convert to a corporation, and a corporation may convert to an organization
79.16 other than a foreign corporation, in each case pursuant to a plan of conversion: approved
79.17 in the manner provided in sections 302A.681 to 302A.692, if:

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

79.19 (2) the other organization complies with its governing statute and organizational
79.20 documents in effecting the conversion.

79.21 ~~Subd. 2. Certain definitions.~~ (a) ~~For purposes of sections 302A.681 to 302A.691,~~
79.22 ~~the words, terms, and phrases in paragraphs (b) to (h) have the meanings given them:~~

79.23 ~~(b) "Articles of organization" has the same meaning as it does under section~~
79.24 ~~322B.03, subdivision 6:~~

79.25 ~~(c) "Board of governors" has the same meaning as it does under section 322B.03,~~
79.26 ~~subdivision 7:~~

79.27 ~~(d) "Class," when used with reference to membership interests, has the same~~
79.28 ~~meaning as it does under section 322B.03, subdivision 10:~~

79.29 ~~(e) "Governor" has the same meaning as it does under section 322B.03, subdivision~~
79.30 ~~24:~~

79.31 ~~(f) "Member" has the same meaning as it does under section 322B.03, subdivision 30:~~

79.32 ~~(g) "Membership interest" has the same meaning as it does under section 322B.03,~~
79.33 ~~subdivision 31:~~

79.34 ~~(h) "Series," when used with reference to membership interests, has the same~~
79.35 ~~meaning as it does under section 322B.03, subdivision 44:~~

80.1 Sec. 11. Minnesota Statutes 2010, section 302A.683, is amended to read:

80.2 **302A.683 PLAN OF CONVERSION.**

80.3 A plan of conversion must contain:

80.4 (1) the name, form, and jurisdiction of the governing statute of the converting
80.5 organization before conversion;

80.6 (2) the name, form, and jurisdiction of the governing statute of the converted
80.7 organization after conversion;

80.8 (3) ~~whether the converted organization is a corporation or a limited liability~~
80.9 ~~company;~~

80.10 ~~(4) the terms and conditions of the proposed conversion;~~

80.11 ~~(5) including the manner and basis of for converting each ownership interest in the~~
80.12 ~~converting organization into ownership interests in the converted converting organization~~
80.13 ~~or, in whole or in part, into money or other property; into any combination of money,~~
80.14 interests in the converted organization, and other consideration;

80.15 ~~(6) a copy of the proposed articles of incorporation or articles of organization (4) the~~
80.16 organizational documents of the converted organization; and

80.17 ~~(7) (5) any other provisions with respect to the proposed conversion that are deemed~~
80.18 necessary or desirable.

80.19 Sec. 12. Minnesota Statutes 2010, section 302A.685, is amended to read:

80.20 **302A.685 ~~PLAN APPROVAL~~ ACTION ON PLAN OF CONVERSION BY**
80.21 **CONVERTING CORPORATION.**

80.22 Subdivision 1. **Board approval; notice to owners.** ~~A~~ If the converting organization
80.23 is a corporation, a resolution containing the plan of conversion must be approved by the
80.24 affirmative vote of a majority of the directors or governors present at a meeting of the
80.25 converting corporation's board of directors or the board of governors of the converting
80.26 organization and must then be submitted at a regular or a special meeting to the owners
80.27 of the converting organization corporation's shareholders. Written notice must be given
80.28 to every ~~owner~~ shareholder of the converting ~~organization~~ corporation, whether or not
80.29 entitled to vote at the meeting, not less than 14 days nor more than 60 days before
80.30 the meeting, in the manner provided in section 302A.435 ~~for notice of a meeting of~~
80.31 ~~shareholders or in the manner provided in section 322B.34 for notice of a meeting of~~
80.32 ~~members.~~ The written notice must state that a purpose of the meeting is to consider the
80.33 proposed plan of conversion. A copy or short description of the plan of conversion must
80.34 be included in or enclosed with the notice.

81.1 Subd. 2. **Approval by ~~owners~~ shareholders.** At the meeting, a vote of the ~~owners~~
81.2 shareholders must be taken on the proposed plan. The plan of conversion is adopted when
81.3 approved by the affirmative vote of the holders of a majority of the voting power of all
81.4 shares ~~or membership interests~~ entitled to vote. A class or series of shares ~~or membership~~
81.5 ~~interests~~ is entitled to vote as a class or series on the approval of the plan.

81.6 Sec. 13. **[302A.6871] FILINGS REQUIRED BY CONVERTING**
81.7 **CORPORATION.**

81.8 After a plan of conversion is approved by a converting corporation, the converting
81.9 corporation must cause articles of conversion to be filed with the secretary of state. The
81.10 articles of conversion must be signed on behalf of the converting corporation and must
81.11 include:

81.12 (1) the plan of conversion;

81.13 (2) a statement that the converting corporation has been converted into the converted
81.14 organization;

81.15 (3) the name and form of the converted organization and the jurisdiction of its
81.16 governing statute;

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

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

81.20 (6) if the converted organization is a foreign organization not authorized to transact
81.21 business in this state, the street address of an office which the secretary of state may use
81.22 for the purposes of section 302A.691, subdivision 3.

81.23 Sec. 14. **[302A.688] FILINGS REQUIRED WHEN CORPORATION IS**
81.24 **CONVERTED ORGANIZATION.**

81.25 If the converting organization is not a corporation, the converting organization
81.26 must cause articles of conversion to be filed with the secretary of state. The articles of
81.27 conversion must be signed on behalf of the converting organization and must include, in
81.28 addition to the information required by section 302A.111, subdivision 1:

81.29 (1) the plan of conversion;

81.30 (2) a statement that the converted organization has been converted from the
81.31 converting organization;

81.32 (3) the name and form of the converting organization and the jurisdiction of its
81.33 governing statute; and

82.1 (4) a statement that the conversion was approved as required by the governing
82.2 statute of the converting organization.

82.3 Sec. 15. Minnesota Statutes 2010, section 302A.689, is amended to read:

82.4 **302A.689 ABANDONMENT OF CONVERSION.**

82.5 Subdivision 1. **By shareholders or plan.** After a plan of conversion has been
82.6 approved by the ~~owners~~ shareholders entitled to vote on the approval of the plan as
82.7 provided in section 302A.685, and before the effective date of the plan, it may be
82.8 abandoned by a converting corporation:

82.9 (1) if the ~~owners of the converting organization~~ shareholders entitled to vote on the
82.10 approval of the plan as provided in section 302A.685 have approved the abandonment at a
82.11 meeting by the affirmative vote of the holders of a majority of the voting power of the
82.12 shares ~~or membership interests~~ entitled to vote;

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

82.15 (3) pursuant to subdivision 2.

82.16 Subd. 2. **By board.** A plan of conversion may be abandoned by a converting
82.17 corporation, before the effective date of the plan, by a resolution of the board of
82.18 directors ~~or the board of governors~~ of the converting ~~organization abandoning the plan~~
82.19 ~~of conversion~~ corporation approved by the affirmative vote of a majority of the directors
82.20 ~~or governors~~ present.

82.21 Subd. 3. **Filing of articles.** If articles of conversion have been filed with the
82.22 secretary of state, but have not yet become effective, the converting ~~organization shall~~
82.23 corporation must file with the secretary of state articles of abandonment that contain:

82.24 (1) the name of the converting ~~organization~~ corporation;

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

82.26 (3) if the plan is abandoned under subdivision 2, the text of the resolution
82.27 abandoning the plan.

82.28 Sec. 16. Minnesota Statutes 2010, section 302A.691, is amended to read:

82.29 **302A.691 EFFECTIVE DATE OR TIME OF CONVERSION; EFFECT.**

82.30 Subdivision 1. **Effective date or time.** A conversion is effective when the articles
82.31 of conversion are filed with the secretary of state or on a later date or at a later time
82.32 specified in the articles of conversion.

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

83.1 or formed on the date that the converting organization was originally incorporated ~~or~~,
83.2 organized, or formed.

83.3 (b) When a conversion becomes effective:

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

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

83.10 ~~(3)~~ all property owned by the converting organization remains vested in the
83.11 converted organization;

83.12 ~~(4)~~ (2) all debts, liabilities, and other obligations of the converting organization
83.13 continue as obligations of the converted organization;

83.14 ~~(5)~~ (3) an action or proceeding pending by or against the converting organization
83.15 may be continued as if the conversion had not occurred; and

83.16 ~~(6)~~ (4) all rights, privileges, immunities, and powers of the converting organization
83.17 remain vested in the converted organization.

83.18 Subd. 3. ~~Effect on shareholders or members. Foreign organization. When~~
83.19 ~~a conversion becomes effective, each share or membership interest in the converting~~
83.20 ~~organization is deemed to be converted into shares or membership interests in the~~
83.21 ~~converted organization or, in whole or in part, into money or other property to be received~~
83.22 ~~under the plan by the shareholders or the members, subject to any dissenters' rights~~
83.23 ~~under section 302A.471, in the case of shareholders of the converting organization, or~~
83.24 ~~section 322B.383, in the case of members of the converting organization. A converted~~
83.25 organization that is a foreign organization consents to the jurisdiction of the courts of
83.26 this state to enforce any debt, obligation, or other liability for which the converting
83.27 corporation is liable if, before the conversion, the converting corporation was subject to
83.28 suit in this state on the debt, obligation, or other liability. A converted organization that is
83.29 a foreign organization and not authorized to transact business in this state appoints the
83.30 secretary of state as its agent for service of process for purposes of enforcing a debt,
83.31 obligation, or other liability under this subdivision. Service on the secretary of state
83.32 under this subdivision must be made in the same manner and has the same consequences
83.33 as in section 5.25, subdivisions 4 and 5.

83.34 Sec. 17. [302A.692] RESTRICTIONS ON APPROVAL OF CONVERSIONS.

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

84.5 (1) a shareholder control agreement of the converting corporation provides for
84.6 approval of a conversion with the consent of fewer than all the members; and

84.7 (2) the shareholder has consented to the provision of the shareholder control
84.8 agreement.

84.9 Subd. 2. **Consent.** A shareholder does not give the consent required by subdivision
84.10 1 merely by consenting to a provision of a shareholder control agreement that permits
84.11 the shareholder control agreement to be amended with the consent of fewer than all
84.12 shareholders.

84.13 Sec. 18. Minnesota Statutes 2010, section 308A.121, subdivision 1, is amended to read:

84.14 Subdivision 1. **Name.** The name of a cooperative must distinguish the cooperative
84.15 upon the records in the Office of the Secretary of State from the name of a domestic
84.16 corporation, whether profit or nonprofit, or a limited partnership, or a foreign corporation
84.17 or a limited partnership, whether profit or nonprofit, a limited liability company, whether
84.18 domestic or foreign, a limited liability partnership, whether domestic or foreign, on file,
84.19 authorized or registered to do business in this state at the time of filing or a name the
84.20 right to which is, at the time of incorporation, reserved or provided for in sections 5.35,
84.21 302A.117, 317A.117, 321.0109, 322B.125, 322C.0109, or 333.001 to 333.54.

84.22 Sec. 19. Minnesota Statutes 2010, section 308B.801, subdivision 1, is amended to read:

84.23 Subdivision 1. **Authorization.** Unless otherwise prohibited, cooperatives organized
84.24 under the laws of this state, including cooperatives organized under this chapter or chapter
84.25 308A, may merge or consolidate with each other, a Minnesota limited liability company
84.26 under the provisions of section 322B.755 or sections 322C.1001 to 322C.1015, or
84.27 other business entities organized under the laws of another state by complying with the
84.28 provisions of this section and the law of the state where the surviving or new business
84.29 entity will exist. A cooperative may not merge or consolidate with a business entity
84.30 organized under the laws of this state, other than a cooperative organized under chapter
84.31 308A, unless the law governing the business entity expressly authorizes merger or
84.32 consolidation with a cooperative. This subdivision does not authorize a foreign business
84.33 entity to do any act not authorized by the law governing the foreign business entity.

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85.1 Sec. 20. Minnesota Statutes 2010, section 308B.801, subdivision 2, is amended to read:

85.2 Subd. 2. **Plan.** To initiate a merger or consolidation of a cooperative, a written plan
85.3 of merger or consolidation shall be prepared by the board or by a committee selected by
85.4 the board to prepare a plan. The plan shall state:

85.5 (1) the names of the constituent domestic cooperatives, the name of any Minnesota
85.6 limited liability company that is a party to the merger, to the extent authorized under
85.7 section 322B.755 or sections 322C.1001 to 322C.1005 and 322C.1015, and any foreign
85.8 business entities;

85.9 (2) the name of the surviving or new domestic cooperative, Minnesota limited
85.10 liability company as required by section 322B.755 or 322C.1002, or other foreign
85.11 business entity;

85.12 (3) the manner and basis of converting membership or ownership interests of the
85.13 constituent domestic cooperatives, the surviving Minnesota limited liability company as
85.14 provided in section 322B.755 or 322C.1002, or foreign business entities into membership
85.15 or ownership interests in the surviving or new domestic cooperative, the surviving
85.16 Minnesota limited liability company as authorized in section 322B.755 or 322C.1002, or
85.17 foreign business entity;

85.18 (4) the terms of the merger or consolidation;

85.19 (5) the proposed effect of the consolidation or merger on the members and patron
85.20 members of each constituent domestic cooperative; and

85.21 (6) for a consolidation, the plan shall contain the articles of the entity or
85.22 organizational documents to be filed with the state in which the entity is organized or,
85.23 if the surviving organization is a Minnesota limited liability company, the articles of
85.24 organization.

85.25 Sec. 21. Minnesota Statutes 2010, section 308B.801, subdivision 5, is amended to read:

85.26 Subd. 5. **Effect of merger.** For a merger that does not involve a Minnesota limited
85.27 liability company, the following shall apply to the effect of a merger:

85.28 (a) After the effective date, the domestic cooperative, Minnesota limited liability
85.29 company, if party to the plan, and any foreign business entity that is a party to the plan
85.30 become a single entity. For a merger, the surviving business entity is the business entity
85.31 designated in the plan. For a consolidation, the new domestic cooperative, the Minnesota
85.32 limited liability company, if any, and any foreign business entity is the business entity
85.33 provided for in the plan. Except for the surviving or new domestic cooperative, Minnesota
85.34 limited liability company, or foreign business entity, the separate existence of each merged

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86.1 or consolidated domestic or foreign business entity that is a party to the plan ceases on the
86.2 effective date of the merger or consolidation.

86.3 (b) The surviving or new domestic cooperative, Minnesota limited liability company,
86.4 or foreign business entity possesses all of the rights and property of each of the merged
86.5 or consolidated business entities and is responsible for all their obligations. The title
86.6 to property of the merged or consolidated domestic cooperative or foreign business
86.7 entity is vested in the surviving or new domestic cooperative, Minnesota limited liability
86.8 company, or foreign business entity without reversion or impairment of the title caused
86.9 by the merger or consolidation.

86.10 (c) If a merger involves a Minnesota limited liability company, this subdivision is
86.11 subject to the provisions of section 322B.755 or 322C.1002.

86.12 Sec. 22. Minnesota Statutes 2010, section 308B.805, subdivision 1, is amended to read:

86.13 Subdivision 1. **When authorized; contents of plan.** (a) For purposes of this section,
86.14 "subsidiary" means a domestic cooperative, a Minnesota limited liability company, or
86.15 a foreign cooperative, and "cooperative" means a domestic cooperative. A Minnesota
86.16 limited liability company may only participate in a merger under this section to the extent
86.17 authorized under section 322B.755 or 322C.1002. A parent domestic cooperative or a
86.18 subsidiary that is a domestic cooperative may complete the merger of a subsidiary as
86.19 provided in this section, provided however, if either the parent or the subsidiary is a
86.20 business entity organized under the laws of this state, the merger of the subsidiary is
86.21 not authorized under this section unless the law governing the business entity expressly
86.22 authorizes merger with a cooperative. A parent cooperative owning at least 90 percent
86.23 of the outstanding ownership interests of each class and series of a subsidiary directly,
86.24 or indirectly through related organizations, other than classes or series that, absent this
86.25 section, would otherwise not be entitled to vote on the merger, may merge the subsidiary
86.26 into itself or into any other subsidiary at least 90 percent of the outstanding ownership
86.27 interests of each class and series of which is owned by the parent cooperative directly,
86.28 or indirectly through related organizations, other than classes or series that, absent this
86.29 section, would otherwise not be entitled to vote on the merger, without a vote of the
86.30 members of itself or any subsidiary or may merge itself, or itself and one or more of the
86.31 subsidiaries, into one of the subsidiaries under this section. A resolution approved by the
86.32 affirmative vote of a majority of the directors of the parent cooperative present shall
86.33 set forth a plan of merger that contains:

86.34 (1) the name of the subsidiary or subsidiaries, the name of the parent, and the name
86.35 of the surviving cooperative;

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87.1 (2) the manner and basis of converting the membership interests of the subsidiary or
87.2 subsidiaries or parent into securities of the parent, subsidiary, or of another cooperative
87.3 or, in the whole or in part, into money or other property;

87.4 (3) if the parent is a constituent cooperative but is not the surviving cooperative in
87.5 the merger, a provision for the pro rata issuance of membership interests of the surviving
87.6 cooperative to the holders of membership interests of the parent on surrender of any
87.7 certificates for shares of the parent; and

87.8 (4) if the surviving cooperative is a subsidiary, a statement of any amendments to the
87.9 articles of the surviving cooperative that will be part of the merger.

87.10 (b) If the parent is a constituent cooperative and the surviving cooperative in the
87.11 merger, it may change its cooperative name, without a vote of its members, by the
87.12 inclusion of a provision to that effect in the resolution of merger setting forth the plan of
87.13 merger that is approved by the affirmative vote of a majority of the directors of the parent
87.14 present. Upon the effective date of the merger, the name of the parent shall be changed.

87.15 (c) If the parent is a constituent cooperative but is not the surviving cooperative in
87.16 the merger, the resolution is not effective unless it is also approved by the affirmative
87.17 vote of the holders of a majority of the voting power of all membership interests of the
87.18 parent entitled to vote at a regular or special meeting if the parent is a cooperative, or in
87.19 accordance with the laws under which it is organized if the parent is a foreign business
87.20 entity or cooperative.

87.21 Sec. 23. Minnesota Statutes 2010, section 308B.835, subdivision 2, is amended to read:

87.22 Subd. 2. **Generally.** (a) A merger may be abandoned:

87.23 (1) if the members of each of the constituent domestic cooperatives entitled to vote
87.24 on the approval of the plan have approved the abandonment at a meeting by the affirmative
87.25 vote of the holders of a majority of the voting power of the membership interests entitled
87.26 to vote; if the merger is with a domestic cooperative and a Minnesota limited liability
87.27 company or foreign business entity, if abandonment is approved in such manner as may be
87.28 required by section 322B.755 or 322C.1003 for the involvement of a Minnesota limited
87.29 liability company, or for a foreign business entity by the laws of the state under which
87.30 the foreign business entity is organized; and the members of a constituent domestic
87.31 cooperative are not entitled to vote on the approval of the plan, the board of the constituent
87.32 domestic cooperative has approved the abandonment by the affirmative vote of a majority
87.33 of the directors present;

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

88.1 (3) under paragraph (b).

88.2 (b) A plan of merger may be abandoned before the effective date of the plan by a
88.3 resolution of the board of any constituent domestic cooperative abandoning the plan of
88.4 merger approved by the affirmative vote of a majority of the directors present, subject
88.5 to the contract rights of any other person under the plan. If a plan of merger is with a
88.6 domestic or foreign business entity, the plan of merger may be abandoned before the
88.7 effective date of the plan by a resolution of the foreign business entity adopted according
88.8 to the laws of the state under which the foreign business entity is organized, subject to
88.9 the contract rights of any other person under the plan. If the plan of merger is with
88.10 a Minnesota limited liability company, the plan of merger may be abandoned by the
88.11 Minnesota limited liability company as provided in section 322B.755 or 322C.1003,
88.12 subject to the contractual rights of any other person under the plan.

88.13 (c) If articles of merger have been filed with the secretary of state, but have not
88.14 yet become effective, the constituent organizations, in the case of abandonment under
88.15 paragraph (a), clause (1), the constituent organizations or any one of them, in the case
88.16 of abandonment under paragraph (a), clause (2), or the abandoning organization in the
88.17 case of abandonment under paragraph (b), shall file with the secretary of state articles of
88.18 abandonment that contain:

88.19 (1) the names of the constituent organizations;

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

88.21 (3) if the plan is abandoned under paragraph (b), the text of the resolution
88.22 abandoning the plan.

88.23 Sec. 24. Minnesota Statutes 2010, section 317A.115, subdivision 2, is amended to read:

88.24 Subd. 2. **Name must be distinguishable.** (a) A corporate name must be
88.25 distinguishable upon the records in the Office of the Secretary of State from the name of a
88.26 domestic corporation or limited partnership, a foreign corporation or limited partnership,
88.27 whether profit or nonprofit, a limited liability company, whether domestic or foreign,
88.28 on file, authorized to do business in this state at the time of filing, a limited liability
88.29 partnership, whether domestic or foreign, or a name the right to which is, at the time of
88.30 incorporation, reserved, registered, or provided for in section 5.35, 317A.117, 302A.117,
88.31 321.0109, 322B.125 or 322C.0109, or sections 333.001 to 333.54, unless one of the
88.32 following is filed with the articles:

88.33 (1) the written consent of the organization having the name that is not distinguishable;

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

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89.1 (3) an affidavit of nonuse of the kind required by section 302A.115, subdivision 1,
89.2 paragraph (d), clause (3).

89.3 (b) The secretary of state shall determine whether a name is distinguishable from
89.4 another name for purposes of this section and section 317A.117.

89.5 (c) This subdivision does not affect the right of a corporation existing on January
89.6 1, 1991, or a foreign corporation authorized to do business in this state on that date, to
89.7 use its corporate name.

89.8 Sec. 25. Minnesota Statutes 2010, section 319B.02, subdivision 3, is amended to read:

89.9 Subd. 3. **Certificate of authority.** "Certificate of authority" means:

89.10 (1) with respect to a foreign firm that is a corporation, the certificate of authority
89.11 required under sections 303.01 to 303.24 and any notice filed under section 303.115 in
89.12 connection with that certificate; and

89.13 (2) with respect to a foreign firm that is a limited liability company, the certificate
89.14 of authority ~~required under~~ referred to in sections 322B.905 to 322B.955 or 322C.802
89.15 to 322C.804 and any notice filed under section 322B.92, clause (3), in connection with
89.16 that certificate.

89.17 Sec. 26. Minnesota Statutes 2010, section 319B.02, subdivision 22, is amended to read:

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

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

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

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

89.27 (4) with respect to a Minnesota professional firm that is a limited liability partnership
89.28 and has an effective statement of qualification under section 323A.1001, amend that
89.29 statement of qualification; and

89.30 (5) with respect to a foreign professional firm that is a limited liability partnership
89.31 and has an effective statement of foreign qualification under section 323A.1102, amend
89.32 that statement of foreign qualification.

89.33 Sec. 27. Minnesota Statutes 2010, section 319B.10, subdivision 3, is amended to read:

90.1 Subd. 3. **Filings with secretary of state.** (a) For a Minnesota professional firm
90.2 involved in a merger, the document filed with the secretary of state to effectuate the
90.3 merger must state whether that Minnesota professional firm will survive the merger, and
90.4 if so, whether that Minnesota professional firm will remain a Minnesota professional
90.5 firm once the merger takes effect.

90.6 (b) For a foreign professional firm involved in a merger, the certificate filed with the
90.7 secretary of state under section 303.11 ~~or~~ 322B.92, or 322C.1004 must be accompanied
90.8 by a statement as to whether that foreign firm will survive the merger, and if so, whether
90.9 that foreign professional firm will remain a foreign professional firm once the merger
90.10 takes effect.

90.11 Sec. 28. Minnesota Statutes 2010, section 321.0108, is amended to read:

90.12 **321.0108 NAME.**

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

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

90.18 (c) Except as provided in section 321.1206(e)(1), the name of a limited liability
90.19 limited partnership must contain the phrase "limited liability limited partnership" or the
90.20 abbreviation "LLLP" or "L.L.L.P." and must not otherwise contain the abbreviation
90.21 "L.P." or "LP."

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

90.24 (e) The limited partnership name shall be distinguishable upon the records in the
90.25 Office of the Secretary of State from the name of each domestic corporation, limited
90.26 partnership, limited liability partnership, and limited liability company, whether profit or
90.27 nonprofit, and each foreign corporation, limited partnership, limited liability partnership,
90.28 and limited liability company on file, authorized or registered to do business in this state
90.29 at the time of filing, whether profit or nonprofit, and each name the right to which is, at
90.30 the time of formation, reserved as provided for in sections 5.35, 302A.117, 322A.03,
90.31 322B.125, 322C.0109, or 333.001 to 333.54, unless there is filed with the certificate of
90.32 limited partnership one of the following:

90.33 (1) the written consent of the domestic corporation, limited partnership, limited
90.34 liability partnership, or limited liability company, or the foreign corporation, limited
90.35 partnership, limited liability partnership, or limited liability company authorized or

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91.1 registered to do business in this state or the holder of a reserved name or a name filed by
91.2 or registered with the secretary of state under sections 333.001 to 333.54 having a name
91.3 that is not distinguishable;

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

91.6 (3) the applicant's affidavit that the corporation, limited partnership, or limited
91.7 liability company with the name that is not distinguishable has been incorporated or on file
91.8 in this state for at least three years prior to the affidavit, if it is a domestic corporation,
91.9 limited partnership, or limited liability company, or has been authorized or registered to
91.10 do business in this state for at least three years prior to the affidavit, if it is a foreign
91.11 corporation, limited partnership, or limited liability company, or that the holder of a name
91.12 filed or registered with the secretary of state under sections 333.001 to 333.54 filed or
91.13 registered that name at least three years prior to the affidavit; that the corporation, limited
91.14 partnership, or limited liability company or holder has not during the three-year period
91.15 before the affidavit filed any document with the secretary of state; that the applicant has
91.16 mailed written notice to the corporation, limited partnership, or limited liability company
91.17 or the holder of a name filed or registered with the secretary of state under sections
91.18 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the
91.19 registered office of the corporation or limited liability company or in care of the agent of
91.20 the limited partnership, or the address of the holder of a name filed or registered with the
91.21 secretary of state under sections 333.001 to 333.54, shown in the records of the secretary
91.22 of state, stating that the applicant intends to use a name that is not distinguishable and the
91.23 notice has been returned to the applicant as undeliverable to the addressee corporation,
91.24 limited partnership, limited liability company, or holder of a name filed or registered
91.25 with the secretary of state under sections 333.001 to 333.54; that the applicant, after
91.26 diligent inquiry, has been unable to find any telephone listing for the corporation, limited
91.27 partnership, or limited liability company with the name that is not distinguishable in the
91.28 county in which is located the registered office of the corporation, limited partnership, or
91.29 limited liability company shown in the records of the secretary of state or has been unable
91.30 to find any telephone listing for the holder of a name filed or registered with the secretary
91.31 of state under sections 333.001 to 333.54 in the county in which is located the address
91.32 of the holder shown in the records of the secretary of state; and that the applicant has no
91.33 knowledge that the corporation, limited partnership, limited liability company, or holder
91.34 of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is
91.35 currently engaged in business in this state.

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92.1 (f) The secretary of state shall determine whether a name is distinguishable from
92.2 another name for purposes of this section and section 321.0109.

92.3 (g) This section and section 321.0109 do not abrogate or limit the law of unfair
92.4 competition or unfair practices; nor sections 333.001 to 333.54; nor the laws of the United
92.5 States with respect to the right to acquire and protect copyrights, trade names, trademarks,
92.6 service names, service marks, or any other rights to the exclusive use of names or symbols;
92.7 nor derogate the common law or the principles of equity.

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

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

92.20 Sec. 29. **REVISOR'S INSTRUCTION.**

92.21 The revisor of statutes shall remove the references to sections of Minnesota Statutes,
92.22 chapter 322B, in the sections amended in this article and elsewhere in Minnesota Statutes
92.23 and make any necessary related changes.

92.24 **EFFECTIVE DATE.** This section is effective January 1, 2015.

92.25 Sec. 30. **REPEALER.**

92.26 Minnesota Statutes 2010, section 302A.687, is repealed.

92.27 Sec. 31. **EFFECTIVE DATE.**

92.28 Except as otherwise provided, this article is effective August 1, 2012.

APPENDIX
Article locations in 11-0199

ARTICLE 1 REVISED UNIFORM LIMITED LIABILITY COMPANY ACT Page.Ln 2.1
ARTICLE 2 CONFORMING CHANGES Page.Ln 73.31