

## HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2190

02/25/2014 Authored by Rosenthal and Selcer  
The bill was read for the first time and referred to the Committee on Judiciary Finance and Policy  
03/06/2014 Adoption of Report: Re-referred to the Committee on Civil Law  
03/12/2014 Adoption of Report: Placed on the General Register  
Read Second Time  
03/31/2014 Calendar for the Day, Amended  
Read Third Time as Amended  
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

## A bill for an act

relating to business organizations; providing a prefiling document review;  
regulating limited liability companies and business corporations; amending  
Minnesota Statutes 2012, sections 80B.01, subdivision 6; 302A.011, subdivisions  
18, 63, 64; 302A.111, subdivisions 2, 4; 302A.137; 302A.351; 302A.361;  
302A.423, subdivision 2; 302A.441, subdivision 3; 302A.471, subdivision 1;  
302A.473, subdivision 1; 302A.611, subdivision 1; 302A.621, subdivision 3;  
302A.641, subdivision 2; 302A.651, subdivision 4; 302A.681, subdivision 1, by  
adding a subdivision; 302A.683; 302A.685; 302A.687; 302A.689; 302A.691,  
subdivisions 2, 3; 302A.734, subdivision 2; 322B.115, subdivision 2; 322B.155;  
322B.35, subdivision 3; 322B.386, subdivision 1; 322B.689; 322B.69; 322B.71,  
subdivision 1; 322B.75, subdivision 2; 322B.76, subdivision 4; 322B.78;  
322B.826, subdivision 2; proposing coding for new law in Minnesota Statutes,  
chapter 5.

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

Section 1. **[5.39] PREFILING DOCUMENT REVIEW.**

**Subdivision 1. Authorization and initiation.** (a) The secretary of state shall  
conduct a prefiling review of a document proposed for filing on behalf of a business entity  
if the filing party submits to the secretary of state:

(1) the document to be reviewed and a nonrefundable \$250 fee; and

(2) a name reservation form, if the document proposes a name change or requires  
the use of a name otherwise unregistered at the time the document is submitted under  
this subdivision.

(b) If the secretary of state determines that the prefiled document meets all applicable  
statutory requirements, the document shall be returned to the filing party with an approval  
stamp affixed to the document that includes the approval date.

(c) The fee submitted pursuant to paragraph (a) shall be deposited by the secretary of state in the state treasury and credited to the Uniform Commercial Code account for the purposes in section 336.1-110.

Subd. 2. **Subsequent filing.** A document approved pursuant to subdivision 1 may be filed with the secretary of state without further substantive review if:

(1) the document submitted for filing is the document submitted for prefiling review and is submitted within six months of its approval date;

(2) the appropriate filing fee is submitted by the filing party with the document being filed; and

(3) neither the applicable statutory requirements nor the status of the business entity has changed since the approval date of the prefiling review.

Sec. 2. Minnesota Statutes 2012, section 80B.01, subdivision 6, is amended to read:

Subd. 6. **Offeror.** "Offeror" means a person who makes or in any way participates in making a takeover offer. Offeror does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and not otherwise participating in the takeover offer. When two or more persons act as a partnership, limited partnership, limited liability company, syndicate, or other group pursuant to any agreement, arrangement, relationship, understanding, or otherwise (whether or not in writing) for the purpose of acquiring, owning, or voting securities of a target company, all members of the partnership, limited liability company, syndicate, or other group constitute "a person."

Sec. 3. Minnesota Statutes 2012, section 302A.011, subdivision 18, is amended to read:

Subd. 18. **Officer.** "Officer" means the chief executive officer, the chief financial officer, a person elected, appointed, or otherwise designated as an officer pursuant to section 302A.311, and any other person deemed elected as an officer pursuant to section 302A.321. The term does not include a person elected, appointed, or otherwise designated chair of the board of the corporation, unless otherwise provided in the articles or bylaws.

Sec. 4. Minnesota Statutes 2012, section 302A.011, subdivision 63, is amended to read:

Subd. 63. **Converted organization.** "Converted organization" means the domestic or foreign corporation or domestic or foreign limited liability company resulting from a conversion under sections 302A.681 to 302A.691.

3.1 Sec. 5. Minnesota Statutes 2012, section 302A.011, subdivision 64, is amended to read:

3.2 Subd. 64. **Converting organization.** "Converting organization" means the domestic  
3.3 or foreign corporation or domestic or foreign limited liability company that effects a  
3.4 conversion under sections 302A.681 to 302A.691.

3.5 Sec. 6. Minnesota Statutes 2012, section 302A.111, subdivision 2, is amended to read:

3.6 Subd. 2. **Statutory provisions that may be modified only in articles or in a**  
3.7 **shareholder control agreement.** The following provisions govern a corporation unless  
3.8 modified in the articles or in a shareholder control agreement under section 302A.457:

3.9 (a) a corporation has general business purposes (section 302A.101);

3.10 (b) a corporation has perpetual existence and certain powers (section 302A.161);

3.11 (c) the power to adopt, amend, or repeal the bylaws is vested in the board (section  
3.12 302A.181);

3.13 (d) a corporation must allow cumulative voting for directors (section 302A.215,  
3.14 subdivision 2);

3.15 (e) the affirmative vote of a majority of directors present is required for an action  
3.16 of the board (section 302A.237);

3.17 (f) a written action by the board taken without a meeting must be signed by all  
3.18 directors (section 302A.239);

3.19 (g) the board may authorize the issuance of securities and rights to purchase  
3.20 securities (section 302A.401, subdivision 1);

3.21 (h) all shares are common shares entitled to vote and are of one class and one series  
3.22 (section 302A.401, subdivision 2, clauses (a) and (b));

3.23 (i) all shares have equal rights and preferences in all matters not otherwise provided  
3.24 for by the board (section 302A.401, subdivision 2, clause (b));

3.25 (j) the par value of shares is fixed at one cent per share for certain purposes and may be  
3.26 fixed by the board for certain other purposes (section 302A.401, subdivision 2, clause (c));

3.27 (k) the board or the shareholders may issue shares for any consideration or for no  
3.28 consideration to effectuate share dividends, divisions, or combinations, and determine the  
3.29 value of nonmonetary consideration (section 302A.405, subdivision 1);

3.30 (l) shares of a class or series must not be issued to holders of shares of another class  
3.31 or series to effectuate share dividends, divisions, or combinations, unless authorized by a  
3.32 majority of the voting power of the shares of the same class or series as the shares to be  
3.33 issued (section 302A.405, subdivision 1);

3.34 (m) a corporation may issue rights to purchase securities whose terms, provisions,  
3.35 and conditions are fixed by the board (section 302A.409);

(n) a shareholder has certain preemptive rights, unless otherwise provided by the board (section 302A.413);

(o) the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a plurality of the votes cast (section 302A.215, subdivision 1) or a majority of the voting power of all shares entitled to vote (section 302A.437, subdivision 1);

(p) shares of a corporation acquired by the corporation may be reissued (section 302A.553, subdivision 1);

(q) each share has one vote unless otherwise provided in the terms of the share (section 302A.445, subdivision 3);

(r) a corporation may issue shares for a consideration less than the par value, if any, of the shares (section 302A.405, subdivision 2);

(s) the board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval (section 302A.402); ~~and~~

(t) a written action of shareholders must be signed by all shareholders (section 302A.441);<sub>2</sub>

(u) specified amendments of the articles create dissenters' rights (section 302A.471, subdivision 1, clause (a)); and

(v) shareholders are entitled to vote as a class or series upon proposed amendments to the articles in specified circumstances (section 302A.137).

Sec. 7. Minnesota Statutes 2012, section 302A.111, subdivision 4, is amended to read:

Subd. 4. **Optional provisions; specific subjects.** The provisions in paragraphs (a), (g), (q), (r), and (u) may be included in the articles.

The provisions in paragraphs (b) to (f), (h) to (p), (s), and (t) may be included either in the articles or the bylaws:

(a) the members of the first board may be named in the articles (section 302A.201, subdivision 1);

(b) a manner for increasing or decreasing the number of directors may be provided (section 302A.203);

(c) additional qualifications for directors may be imposed (section 302A.205);

(d) directors may be classified (section 302A.213);

(e) the day or date, time, and place of board meetings may be fixed (section 302A.231, subdivision 1);

(f) absent directors may be permitted to give written consent or opposition to a proposal (section 302A.233);

(g) a larger than majority vote may be required for board action (section 302A.237);

(h) authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer (section 302A.305, subdivision 2);

(i) additional officers may be designated (section 302A.311);

(j) additional powers, rights, duties, and responsibilities may be given to officers (section 302A.311);

(k) a method for filling vacant offices may be specified (section 302A.341, subdivision 3);

(l) a certain officer or agent may be authorized to sign share certificates (section 302A.417, subdivision 2);

(m) the transfer or registration of transfer of securities may be restricted (section 302A.429);

(n) the day or date, time, and place of regular shareholder meetings may be fixed (section 302A.431, subdivision 3);

(o) certain persons may be authorized to call special meetings of shareholders (section 302A.433, subdivision 1);

(p) notices of shareholder meetings may be required to contain certain information (section 302A.435, subdivision 3);

(q) a larger than majority vote may be required for shareholder action (section 302A.437);

(r) voting rights may be granted in or pursuant to the articles to persons who are not shareholders (section 302A.445, subdivision 4);

(s) corporate actions giving rise to dissenter rights may be designated (section 302A.471, subdivision 1, clause ~~(e)~~ (g));

(t) the rights and priorities of persons to receive distributions may be established (section 302A.551); and

(u) a director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles (section 302A.251, subdivision 4).

Nothing in this subdivision limits the right of the board, by resolution, to take an action that may be included in the bylaws under this subdivision without including it in the bylaws, unless it is required to be included in the bylaws by another provision of this

chapter. Nothing in this subdivision limits the permissible scope of a shareholder control agreement under section 302A.457.

Sec. 8. Minnesota Statutes 2012, section 302A.137, is amended to read:

**302A.137 CLASS OR SERIES VOTING ON AMENDMENTS.**

Subdivision 1. Amendments creating rights. Except as provided in subdivision 2, the holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

(a) effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series, or effect a combination of outstanding shares of a class or series into a lesser number of shares of the class or series where each other class and series is not subject to a similar combination;

(b) effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;

(c) change the rights or preferences of the shares of the class or series;

(d) create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;

(e) divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;

(f) limit or deny any existing preemptive rights of the shares of the class or series; or

(g) cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

Subd. 2. Combined voting groups. The articles may provide that, if a proposed amendment entitling the holders of the outstanding shares of two or more classes or series to vote as separate classes or series under subdivision 1 would affect those classes or series in the same or a substantially similar way, the holders of the outstanding shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment.

Sec. 9. Minnesota Statutes 2012, section 302A.351, is amended to read:

**302A.351 DELEGATION.**

Unless prohibited by the articles or bylaws or by a resolution approved by the affirmative vote of a majority of the directors present, an officer ~~elected or appointed by the board~~ may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. An officer who delegates the duties or powers of an office ~~remains~~ is subject to the standard of conduct for an officer stated in section 302A.361 with respect to ~~the discharge of all:~~ (1) the act of delegation; and (2) the supervision of persons to whom those duties and powers are so delegated.

Sec. 10. Minnesota Statutes 2012, section 302A.361, is amended to read:

**302A.361 STANDARD OF CONDUCT.**

An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been an officer of the corporation. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 302A.351 is deemed an officer for purposes of this section and sections 302A.467 and 302A.521.

Sec. 11. Minnesota Statutes 2012, section 302A.423, subdivision 2, is amended to read:

Subd. 2. **Restrictions; rights.** A corporation shall not pay money for fractional shares if that action would result in the cancellation of more than 20 percent of the outstanding shares of a class or series. Subject to the rights, if any, of dissenting shareholders under section 302A.471, a determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificated or uncertificated fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

Sec. 12. Minnesota Statutes 2012, section 302A.441, subdivision 3, is amended to read:

Subd. 3. **Notice and liability.** When written action is permitted to be taken by less than all shareholders, all shareholders who did not sign or consent to the written action must be notified of its text and effective time no later than five days after the effective

time of the action. Failure to provide the notice does not invalidate the written action.

A shareholder who does not sign or consent to the written action has no liability for any action authorized by the written action.

Sec. 13. Minnesota Statutes 2012, section 302A.471, subdivision 1, is amended to read:

Subdivision 1. **Actions creating rights.** A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) unless otherwise provided in the articles, an amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder in that it:

(1) alters or abolishes a preferential right of the shares;

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

(3) alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;

(4) excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; except that an amendment to the articles of an issuing public corporation that provides that section 302A.671 does not apply to a control share acquisition does not give rise to the right to obtain payment under this section; or

(5) eliminates the right to obtain payment under this subdivision;

(b) a sale, lease, transfer, or other disposition of property and assets of the corporation that requires shareholder approval under section 302A.661, subdivision 2, but not including a disposition in dissolution described in section 302A.725, subdivision 2, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

(c) a plan of merger, whether under this chapter or under chapter 322B, to which the corporation is a constituent organization, except as provided in subdivision 3, and except for a plan of merger adopted under section 302A.626;

(d) a plan of exchange, whether under this chapter or under chapter 322B, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring organization, except as provided in subdivision 3;

(e) a plan of conversion adopted by the corporation; ~~or~~  
(f) an amendment of the articles in connection with a combination of a class or series under section 302A.402 that reduces the number of shares of the class or series owned by the shareholder to a fraction of a share if the corporation exercises its right to repurchase the fractional share so created under section 302A.423; or  
(g) any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

Sec. 14. Minnesota Statutes 2012, section 302A.473, subdivision 1, is amended to read:

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

(b) "Corporation" means the issuer of the shares held by a dissenter before the corporate action referred to in section 302A.471, subdivision 1 or the successor by merger of that issuer.

(c) "Fair value of the shares" means the value of the shares of a corporation immediately before the effective date of the corporate action referred to in section 302A.471, subdivision 1.

(d) "Interest" means interest commencing five days after the effective date of the corporate action referred to in section 302A.471, subdivision 1, up to and including the date of payment, calculated at the rate provided in section 549.09 ~~for interest on verdicts and judgments~~, subdivision 1, paragraph (c), clause (1).

Sec. 15. Minnesota Statutes 2012, section 302A.611, subdivision 1, is amended to read:

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

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

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

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

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

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

(2) In the case of an exchange, the manner and basis of exchanging the shares to be acquired for securities of, or other ownership interests in, the acquiring organization or

10.1 any other organization or, in whole or part, into money or other property, or of canceling  
10.2 some of the shares;

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

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

10.8 Sec. 16. Minnesota Statutes 2012, section 302A.621, subdivision 3, is amended to read:

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

10.11 (1) the plan of merger;

10.12 (2) a statement that the parent owns directly, or indirectly through related  
10.13 organizations, at least 90 percent of the number of outstanding shares or other ownership  
10.14 interests of each class and series of each subsidiary that is a constituent organization in the  
10.15 merger, other than the classes or series that, absent this section, would otherwise not be  
10.16 entitled to vote on the merger; ~~and the number of shares of each class and series or other~~  
10.17 ~~ownership interests of the subsidiary or subsidiaries, other than classes or series that,~~  
10.18 ~~absent this section, would otherwise not be entitled to vote on the merger, owned by the~~  
10.19 ~~parent directly, or indirectly through related organizations; and~~

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

10.22 Sec. 17. Minnesota Statutes 2012, section 302A.641, subdivision 2, is amended to read:

10.23 Subd. 2. **Effect on organization.** When a merger becomes effective:

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

10.26 (b) the separate existence of all constituent organizations except the surviving  
10.27 organization ceases;

10.28 (c) if the surviving organization is a corporation, the surviving corporation has all the  
10.29 rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of  
10.30 a corporation incorporated under this chapter;

10.31 (d) the surviving organization, whether a corporation, foreign corporation, or  
10.32 domestic or foreign limited liability company, possesses all the rights, privileges,  
10.33 immunities, and franchises, of a public as well as of a private nature, of each of the  
10.34 constituent organizations. All property, real, personal, and mixed, and all debts due on

any account, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be. The title to any real estate, personal, or mixed property or any interest ~~therein~~ in real, personal, or mixed property vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;

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

(f) the articles of the surviving organization are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

Sec. 18. Minnesota Statutes 2012, section 302A.651, subdivision 4, is amended to read:

Subd. 4. **Foreign surviving organization.** If the surviving organization in a merger will be a foreign corporation or limited liability company and will transact business in this state, it shall comply with the provisions of chapter 303 with respect to foreign corporations or chapter 322B with respect to foreign limited liability companies. In every case the surviving organization shall file with the secretary of state:

(a) an agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the surviving organization;

(b) an irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding as provided in section 5.25, and an address to which process may be forwarded; and

(c) an agreement that it will promptly pay to the dissenting shareholders of each domestic constituent corporation the amount, if any, to which they are entitled under section 302A.473.

Sec. 19. Minnesota Statutes 2012, section 302A.681, subdivision 1, is amended to read:

12.1 Subdivision 1. **Conversions authorized.** In each case pursuant to a plan of  
12.2 conversion:

12.3 (1) a domestic corporation may become a domestic or foreign limited liability  
12.4 company, and or a foreign corporation;

12.5 (2) a domestic limited liability company may become a domestic or foreign  
12.6 corporation, in each case pursuant to a plan of conversion or a foreign limited liability  
12.7 company; and

12.8 (3) a foreign corporation or foreign limited liability company may become a  
12.9 domestic corporation or a domestic limited liability company.

12.10 Sec. 20. Minnesota Statutes 2012, section 302A.681, is amended by adding a  
12.11 subdivision to read:

12.12 Subd. 3. **Additional provisions applicable to conversions to or from foreign**  
12.13 **organizations.** If either the converting organization or the converted organization is a  
12.14 foreign organization, then:

12.15 (1) the conversion is authorized only if it is permitted by, and effected in compliance  
12.16 with, the applicable laws of the jurisdiction under which the foreign organization is or  
12.17 will be incorporated or organized;

12.18 (2) if the converted organization will be a foreign organization and will transact  
12.19 business in this state, the converted organization shall comply with the provisions of  
12.20 chapter 303 with respect to foreign corporations or chapter 322B with respect to foreign  
12.21 limited liability companies, as applicable. In every such case, the converted organization  
12.22 shall file with the secretary of state:

12.23 (i) an agreement that it may be served with process in this state in a proceeding for  
12.24 the enforcement of an obligation of the converting organization and in a proceeding for  
12.25 the enforcement of the rights of a dissenting shareholder of the converting organization  
12.26 against the converted organization if the converting organization is a domestic corporation;

12.27 (ii) an irrevocable appointment of the secretary of state as its agent to accept service  
12.28 of process in any proceeding as provided in section 5.25, and an address to which process  
12.29 may be forwarded; and

12.30 (iii) if the converting organization is a domestic organization, an agreement that it  
12.31 will promptly pay to the dissenting owners of the organization the amount, if any to which  
12.32 they are entitled under section 302A.473 or 322B.383, as applicable.

12.33 Sec. 21. Minnesota Statutes 2012, section 302A.683, is amended to read:

12.34 **302A.683 PLAN OF CONVERSION.**

- 13.1 A plan of conversion must contain:
- 13.2 (1) the name of the converting organization;
- 13.3 (2) the name of the converted organization;
- 13.4 (3) whether the converted organization is a domestic or foreign corporation or a
- 13.5 domestic or foreign limited liability company and the name of the jurisdiction under which
- 13.6 the converted organization will be incorporated or organized;
- 13.7 (4) the terms and conditions of the proposed conversion;
- 13.8 (5) the manner and basis of converting each ownership interest in the converting
- 13.9 organization into ownership interests in the converted organization or, in whole or in
- 13.10 part, into money or other property;
- 13.11 (6) if the converted organization is a domestic organization, a copy of the proposed
- 13.12 articles of incorporation or articles of organization of the converted organization; and
- 13.13 (7) any other provisions with respect to the proposed conversion that are deemed
- 13.14 necessary or desirable.

13.15 Sec. 22. Minnesota Statutes 2012, section 302A.685, is amended to read:

13.16 **302A.685 PLAN APPROVAL.**

13.17 Subdivision 1. **Application to domestic and foreign organizations.** If the

13.18 converting organization is a domestic organization, the plan of conversion must be

13.19 approved under subdivisions 2 and 3. If the converting organization is a foreign

13.20 organization, the plan of conversion must be approved under subdivision 4.

13.21 ~~Subdivision 1.~~ Subd. 2. **Board approval; notice to owners.** A resolution

13.22 containing the plan of conversion must be approved by the affirmative vote of a majority

13.23 of the directors or governors present at a meeting of the board of directors or the board

13.24 of governors of the converting organization and must then be submitted at a regular or

13.25 a special meeting to the owners of the converting organization. Written notice must be

13.26 given to every owner of the converting organization, whether or not entitled to vote at the

13.27 meeting, not less than 14 days nor more than 60 days before the meeting, in the manner

13.28 provided in section 302A.435 for notice of a meeting of shareholders or in the manner

13.29 provided in section 322B.34 for notice of a meeting of members. The written notice must

13.30 state that a purpose of the meeting is to consider the proposed plan of conversion. A copy or

13.31 short description of the plan of conversion must be included in or enclosed with the notice.

13.32 Subd. 2 ~~3~~. **Approval by owners.** At the meeting, a vote of the owners must be taken

13.33 on the proposed plan. The plan of conversion is adopted when approved by the affirmative

13.34 vote of the holders of a majority of the voting power of all shares or membership interests

14.1 entitled to vote. A class or series of shares or membership interests is entitled to vote as a  
14.2 class or series on the approval of the plan.

14.3 Subd. 4. **Foreign organizations.** The conversion must be approved in accordance  
14.4 with the applicable laws of the jurisdiction under which the foreign organization is  
14.5 incorporated or organized.

14.6 Sec. 23. Minnesota Statutes 2012, section 302A.687, is amended to read:

14.7 **302A.687 ARTICLES OF CONVERSION.**

14.8 Subdivision 1. **Contents of articles.** Upon receiving the approval required by  
14.9 section 302A.685, articles of conversion must be prepared that contain:

14.10 (1) the plan of conversion;

14.11 (2) the name of the converting organization immediately before the filing of the  
14.12 articles of conversion and the name to which the name of the converting organization is  
14.13 to be changed, which shall be a name that satisfies the laws applicable to the converted  
14.14 organization;

14.15 (3) the type of organization that the converted organization will be and the name of  
14.16 the jurisdiction under which the converted organization will be incorporated or organized;

14.17 (4) a statement that the plan of conversion has been approved by the converting  
14.18 organization under section 302A.685; and

14.19 (5) if the converted organization is a domestic organization, a copy of the articles of  
14.20 incorporation or the articles of organization of the converted organization.

14.21 Subd. 2. **Articles signed, filed.** The articles of conversion must be signed on behalf  
14.22 of the converting organization and filed with the secretary of state. If the converted  
14.23 organization is a domestic organization, filing of the articles of conversion is also deemed  
14.24 to be a filing with the secretary of state of the articles of incorporation or the articles of  
14.25 organization of the converted organization.

14.26 Subd. 3. **Certificate.** The secretary of state shall issue to the converted organization  
14.27 or its legal representative a certificate of conversion and, if the converted organization  
14.28 is a domestic organization, a certificate of incorporation or a certificate of organization  
14.29 ~~to the converted organization or its legal representative.~~

14.30 Sec. 24. Minnesota Statutes 2012, section 302A.689, is amended to read:

14.31 **302A.689 ABANDONMENT OF CONVERSION.**

14.32 Subdivision 1. **By shareholders or plan.** After a plan of conversion of a domestic  
14.33 converting organization has been approved by the owners entitled to vote on the approval

15.1 of the plan as provided in section 302A.685, and before the effective date of the plan, it  
15.2 may be abandoned:

15.3 (1) if the owners of the converting organization entitled to vote on the approval of  
15.4 the plan as provided in section 302A.685 have approved the abandonment at a meeting  
15.5 by the affirmative vote of the holders of a majority of the voting power of the shares  
15.6 or membership interests entitled to vote;

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

15.9 (3) pursuant to subdivision 2.

15.10 Subd. 2. **By board.** A plan of conversion of a domestic converting organization may  
15.11 be abandoned, before the effective date of the plan, by a resolution of the board of directors  
15.12 or the board of governors of the converting organization abandoning the plan of conversion  
15.13 approved by the affirmative vote of a majority of the directors or governors present.

15.14 Subd. 3. **Filing of articles.** If articles of conversion of a domestic converting  
15.15 organization have been filed with the secretary of state, but have not yet become effective,  
15.16 the converting organization shall file with the secretary of state articles of abandonment  
15.17 that contain:

15.18 (1) the name of the converting organization;

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

15.20 (3) if the plan is abandoned under subdivision 2, the text of the resolution  
15.21 abandoning the plan.

15.22 Subd. 4. **Foreign organizations.** A plan of conversion adopted by a foreign  
15.23 organization may be abandoned in accordance with the applicable laws of the jurisdiction  
15.24 under which the foreign organization is incorporated or organized.

15.25 Sec. 25. Minnesota Statutes 2012, section 302A.691, subdivision 2, is amended to read:

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

15.29 (b) When a conversion becomes effective:

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

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

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

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

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

(6) all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization.

Sec. 26. Minnesota Statutes 2012, section 302A.691, subdivision 3, is amended to read:

Subd. 3. **Effect on shareholders or members.** When a conversion becomes effective, each share or membership interest in the converting organization is deemed to be converted into shares or membership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan by the shareholders or the members, subject to any dissenters' rights under section 302A.471, in the case of shareholders of ~~the~~ a converting organization that is a domestic corporation, or section 322B.383, in the case of members of ~~the~~ a converting organization that is a domestic limited liability company.

Sec. 27. Minnesota Statutes 2012, section 302A.734, subdivision 2, is amended to read:

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

(1) the name of the corporation;

(2) the date the articles of dissolution ~~was~~ were filed with the secretary of state or any later effective date or later effective time stated in the articles of dissolution in accordance with subdivision 1; and

(3) a statement that the corporation is dissolved.

Sec. 28. Minnesota Statutes 2012, section 322B.115, subdivision 2, is amended to read:

Subd. 2. **Statutory provisions that may be modified only in articles of organization or a member control agreement.** The following provisions govern a limited liability company unless modified in the articles of organization or a member control agreement under section 322B.37:

(1) a limited liability company has general business purposes (section 322B.10);

(2) a limited liability company has certain powers (section 322B.20);

17.1 (3) the power to adopt, amend, or repeal the bylaws is vested in the board of  
17.2 governors (section 322B.603);

17.3 (4) a limited liability company must allow cumulative voting for governors (section  
17.4 322B.63, subdivision 2);

17.5 (5) the affirmative vote of a majority of governors present is required for an action of  
17.6 the board of governors (section 322B.653);

17.7 (6) a written action by the board of governors taken without a meeting must be  
17.8 signed by all governors (section 322B.656);

17.9 (7) the board may accept contributions, make contribution agreements, and make  
17.10 contribution allowance agreements (sections 322B.40, subdivision 1; 322B.42; and  
17.11 322B.43);

17.12 (8) all membership interests are ordinary membership interests entitled to vote and  
17.13 are of one class with no series (section 322B.40, subdivision 5, clauses (1) and (2));

17.14 (9) all membership interests have equal rights and preferences in all matters not  
17.15 otherwise provided for by the board of governors (section 322B.40, subdivision 5, clause  
17.16 (2));

17.17 (10) the value of previous contributions is to be restated when a new contribution is  
17.18 accepted (section 322B.41);

17.19 (11) a member has certain preemptive rights, unless otherwise provided by the board  
17.20 of governors (section 322B.33);

17.21 (12) the affirmative vote of the owners of a majority of the voting power of the  
17.22 membership interests present and entitled to vote at a duly held meeting is required for  
17.23 an action of the members, except where this chapter requires the affirmative vote of a  
17.24 plurality of the votes cast (section 322B.63, subdivision 1) or a majority of the voting  
17.25 power of all membership interests entitled to vote (section 322B.35, subdivision 1);

17.26 (13) the voting power of each membership interest is in proportion to the value  
17.27 reflected in the required records of the contributions of the members (section 322B.356);

17.28 (14) members share in distributions in proportion to the value reflected in the  
17.29 required records of the contributions of members (section 322B.50);

17.30 (15) members share profits and losses in proportion to the value reflected in the  
17.31 required records of the contributions of members (section 322B.326);

17.32 (16) a written action by the members taken without a meeting must be signed by  
17.33 all members (section 322B.35);

17.34 (17) members have no right to receive distributions in kind and the limited liability  
17.35 company has only limited rights to make distributions in kind (section 322B.52);

17.36 (18) a member is not subject to expulsion (section 322B.306, subdivision 2);

18.1 (19) unanimous consent is required for the transfer of governance rights to a person  
18.2 not already a member (section 322B.313, subdivision 2);

18.3 (20) for limited liability companies whose existence begins before August 1, 1999,  
18.4 unanimous consent is required to avoid dissolution (section 322B.80, subdivision 1,  
18.5 clause (5)(i));

18.6 (21) the termination of a person's membership interest has specified consequences  
18.7 (section 322B.306); ~~and~~

18.8 (22) restrictions apply to the assignment of governance rights (section 322B.313); and

18.9 (23) members are entitled to vote as a class or series upon proposed amendments to  
18.10 the articles in specified circumstances (section 322B.155).

18.11 Sec. 29. Minnesota Statutes 2012, section 322B.155, is amended to read:

18.12 **322B.155 CLASS OR SERIES VOTING ON AMENDMENTS.**

18.13 Subdivision 1. Amendments creating rights. Except as provided in subdivision 2,  
18.14 the owners of the outstanding membership interests of a class or series are entitled to vote  
18.15 as a class or series upon a proposed amendment to the articles of organization, whether or  
18.16 not entitled to vote on the amendment by the provisions of the articles of organization,  
18.17 if the amendment would:

18.18 (1) effect an exchange, reclassification, or cancellation of all or part of the  
18.19 membership interests of the class or series, or effect a combination of outstanding  
18.20 membership interests of a class or series into a lesser number of membership interests of  
18.21 the class or series where each other class or series is not subject to a similar combination;

18.22 (2) effect an exchange, or create a right of exchange, of all or any part of the  
18.23 membership interests of another class or series for the membership interests of the class  
18.24 or series;

18.25 (3) change the rights or preferences of the membership interests of the class or series;

18.26 (4) create a new class or series of membership interests having rights and preferences  
18.27 prior and superior to the membership interests of that class or series, or increase the rights  
18.28 and preferences or the number of membership interests, of a class or series having rights  
18.29 and preferences prior or superior to the membership interests of that class or series;

18.30 (5) divide the membership interests of the class into series and determine the  
18.31 designation of each series and the variations in the relative rights and preferences between  
18.32 the membership interests of each series or authorize the board of governors to do so;

18.33 (6) limit or deny any existing preemptive rights of the membership interests of  
18.34 the class or series; or

19.1 (7) cancel or otherwise affect distributions on the membership interests of the class  
19.2 or series.

19.3 Subd. 2. **Combined voting groups.** The articles of organization may provide that,  
19.4 if a proposed amendment entitling the holders of the outstanding membership interests  
19.5 of two or more classes or series to vote as separate classes or series under subdivision 1  
19.6 would affect those classes or series in the same or a substantially similar way, the holders  
19.7 of the outstanding membership interests of all the classes or series so affected must vote  
19.8 together as a single voting group on the proposed amendment.

19.9 Sec. 30. Minnesota Statutes 2012, section 322B.35, subdivision 3, is amended to read:

19.10 Subd. 3. **Notice and liability.** When written action is permitted to be taken by less  
19.11 than all members, all members who did not sign or consent to the written action must be  
19.12 notified of its text and effective date no later than five days after the effective time of the  
19.13 action. Failure to provide the notice does not invalidate the written action. A member  
19.14 who does not sign or consent to the written action has no liability for the action or actions  
19.15 taken by the written action.

19.16 Sec. 31. Minnesota Statutes 2012, section 322B.386, subdivision 1, is amended to read:

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

19.19 (b) "Limited liability company" means a limited liability company whose members  
19.20 have obtained rights to dissent under section 322B.383, subdivision 1, and includes any  
19.21 successor by merger.

19.22 (c) "Fair value of the membership interests" means the value of the membership  
19.23 interests of a limited liability company immediately before the effective date of the limited  
19.24 liability company action referred to in section 322B.383, subdivision 1.

19.25 (d) "Interest" means interest beginning five days after the effective date of the  
19.26 limited liability company action referred to in section 322B.383, subdivision 1, up to and  
19.27 including the date of payment, calculated at the rate provided in section 549.09 ~~for interest~~  
19.28 ~~on verdicts and judgments~~, subdivision 1, paragraph (c), clause (1).

19.29 (e) "Member" includes a former member when dissenters' rights exist because:

19.30 (1) the membership of that former member has terminated causing dissolution; and

19.31 (2) the dissolved limited liability company has then entered into a winding up  
19.32 merger under section 322B.81, subdivision 3.

20.1 Sec. 32. Minnesota Statutes 2012, section 322B.689, is amended to read:

20.2 **322B.689 DELEGATION.**

20.3 Unless prohibited by the articles, a member control agreement, or bylaws or by a  
20.4 resolution approved by the affirmative vote of a majority of the governors present, a  
20.5 manager ~~elected or appointed by the board of governors~~ may, without the approval of the  
20.6 board, delegate some or all of the duties and powers of an office to other persons. A  
20.7 manager who delegates the duties or powers of an office ~~remains~~ is subject to the standard  
20.8 of conduct for a manager in section 322B.69 with respect to ~~the discharge of all:~~ (1) the  
20.9 act of delegation; and (2) the supervision of persons to whom those duties and powers are  
20.10 so delegated.

20.11 Sec. 33. Minnesota Statutes 2012, section 322B.69, is amended to read:

20.12 **322B.69 STANDARD OF CONDUCT.**

20.13 A manager shall discharge the duties of an office in good faith, in a manner the  
20.14 manager reasonably believes to be in the best interests of the limited liability company,  
20.15 and with the care an ordinarily prudent person in a like position would exercise under  
20.16 similar circumstances. A person who so performs those duties is not liable by reason of  
20.17 being or having been a manager of the limited liability company. A person exercising the  
20.18 principal functions of an office or to whom some or all of the duties and powers of an  
20.19 office are delegated pursuant to section 322B.689 is considered a manager for purposes of  
20.20 this section and sections 322B.38 and 322B.699.

20.21 Sec. 34. Minnesota Statutes 2012, section 322B.71, subdivision 1, is amended to read:

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

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

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

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

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

20.29 (3)(i) in the case of a merger, the manner and basis of converting the ownership  
20.30 interests of the constituent organizations into securities of, or other ownership interests in,  
20.31 the surviving organization or of any other organization, or, in whole or in part, into money  
20.32 or other property, or of canceling some or all of such ownership interests; or

20.33 (ii) in the case of an exchange, the manner and basis of exchanging the ownership  
20.34 interests to be acquired for securities of, or other ownership interests in, the acquiring

21.1 organization or any other organization or, in whole or part, for money or other property, or  
21.2 of canceling some or all of such ownership interests; or;

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

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

21.8 Sec. 35. Minnesota Statutes 2012, section 322B.75, subdivision 2, is amended to read:

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

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

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

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

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

21.20 (ii) if the surviving organization is not a limited liability company, the surviving  
21.21 organization has all the rights, privileges, immunities, and powers, and is subject to all the  
21.22 duties and liabilities of the organization under its governing law;

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

22.1 any of the constituent organizations does not revert nor in any way become impaired  
22.2 by reason of the merger;

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

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

22.12 Sec. 36. Minnesota Statutes 2012, section 322B.76, subdivision 4, is amended to read:

22.13 Subd. 4. ~~Surviving foreign corporation or foreign limited liability company~~

22.14 Foreign surviving organization. If the surviving organization in a merger will be a  
22.15 foreign corporation or foreign limited liability company and will transact business in this  
22.16 state, it shall comply, as the case may be, with the provisions of chapter 303 with respect  
22.17 to foreign corporations or with the provisions of this chapter with respect to foreign  
22.18 limited liability companies. In every case the surviving foreign corporation or foreign  
22.19 limited liability company shall file with the secretary of state:

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

22.24 (2) an irrevocable appointment of the secretary of state as its agent to accept service  
22.25 of process in any proceeding; as provided in section 5.25, and an address to which process  
22.26 may be forwarded; and

22.27 (3) an agreement that it will promptly pay to any dissenting members of each  
22.28 constituent domestic limited liability company the amount, if any, to which they are  
22.29 entitled under section 322B.386.

22.30 Sec. 37. Minnesota Statutes 2012, section 322B.78, is amended to read:

22.31 **322B.78 CONVERSION.**

22.32 A domestic limited liability company that is not a nonprofit limited liability company  
22.33 may convert to a domestic or foreign corporation or a foreign limited liability company  
22.34 pursuant to sections 302A.681 to 302A.691.

23.1 Sec. 38. Minnesota Statutes 2012, section 322B.826, subdivision 2, is amended to read:

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

23.4 (1) the name of the limited liability company;

23.5 (2) the date the articles of termination ~~was~~ were filed with the secretary of state  
23.6 or any later effective date or later effective time stated in the articles of termination in  
23.7 accordance with subdivision 1; and

23.8 (3) a statement that the limited liability company is terminated at the effective date  
23.9 of the termination.