

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2702

03/07/2012 Authored by Slocum

The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to limited liability companies; providing for the creation and operation
1.3 of low-profit limited liability companies; amending Minnesota Statutes 2010,
1.4 sections 322B.03, by adding a subdivision; 322B.115, subdivision 1; 322B.12,
1.5 subdivision 1; 322B.833, subdivision 1; 322B.843, subdivision 1; proposing
1.6 coding for new law in Minnesota Statutes, chapter 322B.

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

1.8 Section 1. Minnesota Statutes 2010, section 322B.03, is amended by adding a
1.9 subdivision to read:

1.10 Subd. 28a. Low-profit limited liability company; L3C. "Low-profit limited
1.11 liability company" or "L3C" means a limited liability company organized under section
1.12 322B.976.

1.13 Sec. 2. Minnesota Statutes 2010, section 322B.115, subdivision 1, is amended to read:

1.14 Subdivision 1. **Required provisions.** The articles of organization must contain:

- 1.15 (1) the name of the limited liability company;
- 1.16 (2) the address of the registered office of the limited liability company and the name
1.17 of its registered agent, if any, at that address;
- 1.18 (3) the name and address of each organizer; ~~and~~
- 1.19 (4) a statement of the period of existence for the limited liability company if different
1.20 from the period set forth in section 322B.20, subdivision 2; and
- 1.21 (5) in the case of a low-profit limited liability company, a statement that it is formed
1.22 for both a business and charitable purpose that requires its operation as a low-profit limited
1.23 liability company in accordance with section 322B.976.

2.1 Sec. 3. Minnesota Statutes 2010, section 322B.12, subdivision 1, is amended to read:

2.2 Subdivision 1. **Requirements and prohibitions.** The limited liability company
2.3 name must:

2.4 (1) be in the English language or in any other language expressed in English letters
2.5 or characters;

2.6 (2) contain the words "limited liability company," or ~~must contain~~ the abbreviation
2.7 "LLC" or;

2.8 (i) in the case of an organization formed pursuant to chapter 319B, must meet the
2.9 requirements of section 319B.05 applicable to a limited liability company; or

2.10 (ii) if organized as a low-profit limited liability company, contain the words
2.11 "low-profit limited liability company" or "L3C";

2.12 (3) not contain the word corporation or incorporated and must not contain the
2.13 abbreviation of either or both of these words;

2.14 (4) not contain a word or phrase that indicates or implies that it is organized for a
2.15 purpose other than a legal business purpose; and

2.16 (5) be distinguishable upon the records in the Office of the Secretary of State
2.17 from the name of each domestic limited liability company, limited liability partnership,
2.18 corporation, and limited partnership, whether profit or nonprofit, and each foreign limited
2.19 liability company, limited liability partnership, corporation, and limited partnership on
2.20 file, authorized or registered to do business in this state at the time of filing, whether profit
2.21 or nonprofit, and each name the right to which is, at the time of organization, reserved as
2.22 provided for in sections 5.35, 302A.117, 317A.117, 321.0109, 322B.125, or 333.001 to
2.23 333.54, unless there is filed with the articles of organization one of the following:

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

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

2.32 (iii) the applicant's affidavit that the domestic or foreign limited liability company,
2.33 domestic or foreign corporation, or domestic or foreign limited partnership with the
2.34 name that is not distinguishable has been organized, incorporated, or on file in this
2.35 state for at least three years prior to the affidavit, if it is a domestic limited liability
2.36 company, corporation, or limited partnership, or has been authorized or registered to

3.1 do business in this state for at least three years prior to the affidavit, if it is a foreign
3.2 limited liability company, corporation, or limited partnership, or that the holder of a name
3.3 filed or registered with the secretary of state under sections 333.001 to 333.54 filed
3.4 or registered that name at least three years prior to the affidavit, that the domestic or
3.5 foreign limited liability company, domestic or foreign corporation, or domestic or foreign
3.6 limited partnership or holder has not during the three-year period before the affidavit filed
3.7 any document with the secretary of state; that the applicant has mailed written notice
3.8 to the domestic or foreign limited liability company, domestic or foreign corporation,
3.9 or domestic or foreign limited partnership or the holder of a name filed or registered
3.10 with the secretary of state under sections 333.001 to 333.54 by certified mail, return
3.11 receipt requested, properly addressed to the registered office of the domestic or foreign
3.12 limited liability company or domestic or foreign corporation or in care of the agent of the
3.13 domestic or foreign limited partnership, or the address of the holder of a name filed or
3.14 registered with the secretary of state under sections 333.001 to 333.54, shown in the
3.15 records of the secretary of state, stating that the applicant intends to use a name that is
3.16 not distinguishable and the notice has been returned to the applicant as undeliverable to
3.17 the addressee of the domestic or foreign limited liability company, domestic or foreign
3.18 corporation, or domestic or foreign limited partnership or holder of a name filed or
3.19 registered with the secretary of state under sections 333.001 to 333.54; that the applicant,
3.20 after diligent inquiry, has been unable to find any telephone listing for the domestic or
3.21 foreign limited liability company, domestic or foreign corporation, or domestic or foreign
3.22 limited partnership with the name that is not distinguishable in the county in which is
3.23 located the registered office of the domestic or foreign limited liability company, domestic
3.24 or foreign corporation, or domestic or foreign limited partnership shown in the records of
3.25 the secretary of state or has been unable to find any telephone listing for the holder of a
3.26 name filed or registered with the secretary of state under sections 333.001 to 333.54
3.27 in the county in which is located the address of the holder shown in the records of the
3.28 secretary of state; and that the applicant has no knowledge that the domestic or foreign
3.29 limited liability company, domestic or foreign corporation, or domestic or foreign limited
3.30 partnership or holder of a name filed or registered with the secretary of state under sections
3.31 333.001 to 333.54 is currently engaged in business in this state.

3.32 Sec. 4. Minnesota Statutes 2010, section 322B.833, subdivision 1, is amended to read:

3.33 Subdivision 1. **When permitted.** A court may grant any equitable relief it considers
3.34 just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited
3.35 liability company:

4.1 (1) in a supervised winding up and termination pursuant to section 322B.83;

4.2 (2) in an action by a member when it is established that:

4.3 (i) the governors or the persons having the authority otherwise vested in the board
4.4 of governors are deadlocked in the management of the affairs of the limited liability
4.5 company and the members are unable to break the deadlock;

4.6 (ii) the governors or those in control of the limited liability company have acted
4.7 fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in
4.8 their capacities as members or governors of any limited liability company, or as managers
4.9 or employees of a closely held limited liability company;

4.10 (iii) the members of the limited liability company are so divided in voting power
4.11 that, for a period that includes the time when two consecutive regular meetings were held,
4.12 they have failed to elect successors to governors whose terms have expired or would have
4.13 expired upon the election and qualification of their successors;

4.14 (iv) the limited liability company assets are being misapplied or wasted; ~~or~~

4.15 (v) an event of dissolution has occurred under section 322B.80, subdivision 1, clause
4.16 (1), (4) or (5) but the limited liability company is not acting to wind up its affairs; or

4.17 (vi) if the limited liability company is a low-profit limited liability company, it
4.18 ceases to meet any of the requirements of section 322B.976, subdivision 1 or 2, and for
4.19 60 or more days after it ceased to meet those requirements, failed to comply with section
4.20 322B.976, subdivision 3;

4.21 (3) in an action by a creditor when:

4.22 (i) the claim of the creditor has been reduced to judgment and an execution on the
4.23 judgment has been returned unsatisfied; or

4.24 (ii) the limited liability company has admitted in writing that the claim of the creditor
4.25 is due and owing and it is established that the limited liability company is unable to pay its
4.26 debts in the ordinary course of business; or

4.27 (4) in an action by the attorney general to dissolve the limited liability company in
4.28 accordance with section 322B.843 when it is established that a decree of termination
4.29 is appropriate.

4.30 Sec. 5. Minnesota Statutes 2010, section 322B.843, subdivision 1, is amended to read:

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

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

5.1 (2) the limited liability company was organized for a purpose not permitted by
5.2 section 322B.10;

5.3 (3) the limited liability company failed to comply with the requirements of sections
5.4 322B.10 to 322B.18 essential to organization under this chapter;

5.5 (4) the limited liability company has flagrantly violated a provision of this chapter,
5.6 or has violated a provision of this chapter more than once, or has violated more than
5.7 one provision of this chapter; ~~or~~

5.8 (5) the limited liability company has acted, or failed to act, in a manner that
5.9 constitutes surrender or abandonment of the limited liability company privileges or
5.10 enterprise; or

5.11 (6) if the limited liability company is a low-profit limited liability company, it ceases
5.12 to meet any of the requirements of section 322B.976, subdivision 1 or 2, and for 60 or
5.13 more days after it ceased to meet those requirements, failed to comply with section
5.14 322B.976, subdivision 3.

5.15 Sec. 6. **[322B.976] LOW-PROFIT LIMITED LIABILITY COMPANIES.**

5.16 Subdivision 1. **Required purposes.** A low-profit limited liability company must
5.17 significantly further the accomplishment of one or more charitable or educational purposes
5.18 within the meaning of section 170(c)(2)(B) of the Internal Revenue Code of 1986, United
5.19 States Code, title 26, section 170(c)(2)(B), as amended.

5.20 Subd. 2. **Limitations on purposes.** (a) A significant purpose of a low-profit limited
5.21 liability company must not include the production of income or the appreciation of
5.22 property. The fact that a company produces significant income or capital appreciation is
5.23 not, in the absence of other factors, conclusive evidence of a significant purpose involving
5.24 the production of income or the appreciation of property.

5.25 (b) A purpose of a low-profit limited liability company must not include the
5.26 accomplishment of one or more political or legislative purposes within the meaning of
5.27 section 170(c)(2)(D) of the Internal Revenue Code of 1986, United States Code, title 26,
5.28 section 170(c)(2)(D), as amended.

5.29 Subd. 3. **Change of status.** A low-profit limited liability company that no longer
5.30 satisfies the requirements of this section continues to exist as a limited liability company
5.31 provided that it:

5.32 (1) promptly amends its articles of organization and name so that it is no longer
5.33 identified as a low-profit limited liability company; and

5.34 (2) continues to meet all other requirements of this chapter applicable to a limited
5.35 liability company.

6.1 Subd. 4. **No limitation on other limited liability companies.** This section does not
6.2 prevent a limited liability company that is not governed by this section from electing a
6.3 charitable or educational purpose in whole or in part for doing business under this chapter.