

CHAPTER 322B

LIMITED LIABILITY COMPANIES

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322B.03 DEFINITIONS.

[For text of subds 1 to 17, see M.S.1992]

Subd. 17a. **Domestic corporation.** "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 302A.

[For text of subds 18 and 19, see M.S.1992]

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

[For text of subds 20 to 36, see M.S.1992]

Subd. 36a. **Parent.** "Parent" of a specified limited liability company means a limited liability company or a corporation that directly or indirectly owns more than 50 percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

[For text of subds 37 to 40, see M.S.1992]

Subd. 41. **Related organization.** "Related organization" of a specified limited liability company means a parent or subsidiary of the specified limited liability company or another subsidiary of a parent of the specified limited liability company.

[For text of subds 42 to 45, see M.S.1992]

Subd. 45a. **Subsidiary.** "Subsidiary" of a specified limited liability company means a limited liability company or a corporation having more than 50 percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by the specified limited liability company.

[For text of subds 46 to 51, see M.S.1992]

History: 1993 c 137 s 18-22

322B.115 ARTICLES OF ORGANIZATION.

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

- (1) the name of the limited liability company;
- (2) the address of the registered office of the limited liability company and the name of its registered agent, if any, at that address;
- (3) the name and address of each organizer;

(4) the limited period of existence for the limited liability company, which must be a period of 30 years or less from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a longer period of duration;

(5) a statement as to whether upon the occurrence of any event under section 322B.80, subdivision 1, clause (5), that terminates the continued membership of a member in the limited liability company, the remaining members will have the power to avoid dissolution by giving dissolution avoidance consent; and

(6) a statement as to whether the members have the power to enter into a business continuation agreement.

Subd. 2. Statutory provisions that may be modified only in articles of organization. The following provisions govern a limited liability company unless modified in the articles of organization:

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

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

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

(4) a limited liability company must allow cumulative voting for governors (section 322B.63);

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

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

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

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

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

(10) the restatement of value of previous contributions is to be determined according to a specified process (section 322B.41, subdivisions 3 and 4);

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

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

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

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

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

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

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

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

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

(20) unanimous consent is required to avoid dissolution (section 322B.80, subdivision 1, clause (5)(B)).

[For text of subds 3 to 6, see M.S.1992]

History: 1993 c 137 s 23,24

322B.20 POWERS.

[For text of subds 1 to 4, see M.S.1992]

Subd. 5. Property disposition. A limited liability company may sell, convey, mortgage, create a security interest in, otherwise encumber, assign, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.

[For text of subd 6, see M.S.1992]

Subd. 7. Contracts and mortgages. A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or creation of a security interest in or other encumbrance or assignment of all or any of its property, franchises, and income.

[For text of subds 8 to 11, see M.S.1992]

Subd. 12. Pensions and benefits. A limited liability company may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the limited liability company, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

[For text of subd 13, see M.S.1992]

Subd. 14. Insurance. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of any or all of its members, managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.

[For text of subds 15 to 20, see M.S.1992]

Subd. 21. Advances. A limited liability company may make advances to members who provide services to the limited liability company, its governors, managers, and employees and those of its subsidiaries as provided in section 322B.696.

[For text of subds 22 to 24, see M.S.1992]

History: 1993 c 137 s 25-29

322B.30 NATURE OF A MEMBERSHIP INTEREST AND STATEMENT OF INTEREST OWNED.

[For text of subd 1, see M.S.1992]

Subd. 2. Statement of membership interest. At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement. The statement must describe the member's rights to vote, to share in profits and losses,

and to share in distributions, restrictions on assignments of financial rights under section 322B.31, subdivision 3, or governance rights under section 322B.313, subdivision 6, then in effect, as well as any assignment of the member's rights then in effect other than a security interest. The statement is not a certificated security as defined in section 336.8-102(1)(a), is not a negotiable instrument, and may not serve as a vehicle by which a transfer of any membership interest may be effected.

Subd. 3. **Grant of a security interest.** Notwithstanding any law to the contrary, for the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each a general intangible, as defined in section 336.9-106, and not a certificated security as defined in section 336.8-102(1)(a) and not an uncertificated security as defined in section 336.8-102(1)(b) and not chattel paper as defined in section 336.9-105(1)(b) and not an instrument as defined in section 336.9-105(1)(i) and not an account as defined in section 336.9-106.

History: 1993 c 137 s 30,31

322B.306 TERMINATION OF A MEMBERSHIP INTEREST.

Subdivision 1. **Member's power to terminate membership.** A member always has the power, though not necessarily the right, to terminate its membership by resigning or retiring at any time. A member's resignation or retirement, whether rightful or wrongful, causes dissolution under section 322B.80, subdivision 1, clause (5), unless dissolution is avoided under that clause. A member has no power to transfer all or part of the member's membership interest, except as provided in sections 322B.31 and 322B.313.

[For text of subd 2, see M.S.1992]

Subd. 3. **Effect of termination of membership on the governance rights of the terminated member.** If for any reason the continued membership of a member is terminated:

(1) if dissolution under section 322B.80, subdivision 1, clause (5), is avoided under that clause, then the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; and

(2) if dissolution under section 322B.80, subdivision 1, clause (5), is not avoided under that clause, the member whose continued membership has terminated retains all governance rights and financial rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.

Subd. 4. **Additional effects if termination of membership is wrongful.** If a member resigns or retires in contravention of the articles of organization or a member control agreement then:

(1) if dissolution avoidance consent is obtained, the member who has wrongfully resigned or retired is liable to the limited liability company to the extent damaged by the wrongful resignation or retirement; and

(2) if dissolution avoidance consent is not obtained, section 322B.873 applies.

History: 1993 c 137 s 32-34

322B.31 ASSIGNMENT OF FINANCIAL RIGHTS.

[For text of subds 1 and 2, see M.S.1992]

Subd. 3. **Restrictions of assignment of financial rights.** (a) A restriction on the assignment of financial rights may be imposed in the articles, in the operating agreement, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the limited liability company. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.

(b) Subject to paragraph (c), a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

(c) With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the limited liability company under section 322B.30. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.

(d) Notwithstanding any provision of law, articles of organization, member control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with chapter 336, without the consent or approval of the member whose financial rights are subject to the security interest.

History: 1993 c 137 s 35

322B.313 ASSIGNMENT OF GOVERNANCE RIGHTS.

Subdivision 1. Transfer of governance rights restricted. A member's governance rights are assignable, in whole or in part, only as provided in this section.

Subd. 2. When unanimous consent required. Subject to subdivision 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent, unless the articles of organization provide for written consent by fewer than all members. Subject to subdivision 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by this subdivision. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by this subdivision. If a secured party has a security interest in both a member's financial rights and governance rights, including a security interest in a complete membership interest, this subdivision's requirement that the secured party obtain consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.

Subd. 3. Effect on membership. When an assignment of governance rights is effective under subdivision 2:

(1) if the assignment is not a security interest, the assignee becomes a member, if not already a member; and

(2) if the assignor does not retain any governance rights, the assignor ceases to be a member and the written consent required under subdivision 2 also constitutes the dissolution avoidance consent necessary to avoid dissolution that would otherwise ensue under section 322B.80, subdivision 1, clause (5), on account of the assignor ceasing to be a member if the consent required to avoid dissolution is not greater than the consent required under subdivision 2.

Subd. 4. Effect on liability for contributions and illegal distributions. When an assignment other than a security interest is effective under subdivision 2, unless the written consent under subdivision 2 otherwise provides:

(1) the assignee is liable in proportion to the interest assigned for the obligations of the assignor under sections 322B.40 (including liability for unperformed promises

that have been reflected as contributions in the required records) and 322B.55 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and

(2) the assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 322B.40 and 322B.55.

Subd. 5. Consequences of ineffective assignment. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subdivision 2:

(1) the purported or attempted assignment is ineffective in its entirety; and

(2) any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.

Subd. 6. Restrictions on assignment of governance rights. Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in section 322B.31, subdivision 3, for restricting the transfer of financial rights.

Subd. 7. Foreclosure of security interest. Notwithstanding any provision of law, articles of organization, member control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with chapter 336, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

History: 1993 c 137 s 36

322B.316 EFFECTIVE DATE OF ASSIGNMENTS.

Any permissible and otherwise valid assignment of financial rights under section 322B.31 or of governance rights or a complete membership interest under section 322B.313 will be effective as to and binding on the limited liability company only when the assignee's name, address, and the nature and extent of the assignment are reflected in the required records of the limited liability company, except that a permissible and otherwise valid security interest in a complete membership interest, financial rights, or governance rights will be effective as to and binding on the limited liability company as provided in chapter 336 whether or not the information about the secured party or the permissible and otherwise valid security interest is reflected in the required records of the limited liability company.

History: 1993 c 137 s 37

322B.323 POWERS OF ESTATE OF A DECEASED OR INCOMPETENT MEMBER.

[For text of subd 1, see M.S.1992]

Subd. 2. When membership is terminated. If an event referred to in subdivision 1 causes the termination of a member's membership interest and dissolution is avoided under section 322B.80, subdivision 1, clause (5), then:

(1) as provided in section 322B.306, subdivision 3, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and

(2) the rights to be exercised by the legal representative of the terminated member will be limited accordingly.

History: 1993 c 137 s 38

322B.373 REQUIRED RECORDS AND INFORMATION.

Subdivision 1. **Required records.** A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board of governors:

(1) a current list of the full name and last-known business, residence, or mailing address of each member, governor, and chief manager;

(2) a current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights other than a secured party, and a description of the rights assigned;

(3) a copy of the articles of organization and all amendments to the articles;

(4) copies of any currently effective written operating agreement;

(5) copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(6) financial statements required by section 322B.376;

(7) records of all proceedings of members for the last three years;

(8) records of all proceedings of the board of governors for the last three years;

(9) reports made to members generally within the last three years;

(10) member control agreements described in section 322B.37;

(11) a statement of all contributions accepted under section 322B.40, subdivision 3, including for each contribution:

(i) the identity of the member to whom the contribution relates;

(ii) the class or series to which the contribution pertains;

(iii) the amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;

(iv) a description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and

(v) the value accorded under section 322B.40, subdivision 4 to:

(A) any other property transferred or promised to be transferred to the limited liability company; and

(B) any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;

(12) a statement of all contribution agreements made under section 322B.42, including for each contribution agreement:

(i) the identity of the would-be contributor;

(ii) the class or series to which the future contribution pertains; and

(iii) as to each future contribution to be made, the same information as subdivision 1, clause (11) requires for contributions already accepted;

(13) a statement of all contribution allowance agreements made under section 322B.43, including for each contribution allowance agreement:

(i) the identity of the would-be contributor;

(ii) the class or series to which the future contribution would pertain; and

(iii) as to each future contribution allowed to be made, the same information as subdivision 1, clause (11) requires for contributions already accepted;

(14) an explanation of any restatement of value made under section 322B.41;

(15) any written consents obtained from members under this chapter;

(16) a copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under section 322B.40, subdivision 6.

[For text of subds 2 to 6, see M.S.1992]

History: 1993 c 137 s 39

322B.54 LIMITATIONS ON DISTRIBUTION.

[For text of subds 1 and 2, see M.S.1992]

Subd. 3. Effect measured. (a) In the case of a distribution made by a limited liability company in connection with a redemption of its membership interests, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the limited liability company, or as of the date on which the member ceases to be a member of the limited liability company, whichever is the earliest.

(b) The effect of any other distribution must be measured as of the date of its authorization if payment occurs 120 days or less following the date of authorization, or as of the date of payment if payment occurs more than 120 days following the date of authorization.

(c) Indebtedness of a limited liability company incurred or issued in a distribution in accordance with this section to a member who as a result of the transaction is no longer a member is on a parity with the indebtedness of the limited liability company to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the limited liability company or a related organization, or subject to any other agreement between the limited liability company and the member.

(d) Sections 322B.54 to 322B.56 supersede all other statutes of this state with respect to distributions, and the provisions of sections 513.41 to 513.51 do not apply to distributions made by a limited liability company governed by this chapter.

[For text of subd 4, see M.S.1992]

History: 1993 c 137 s 40

322B.693 LOANS, GUARANTEES AND SURETYSHIP.

Subdivision 1. Prerequisites. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:

- (1) is in the usual and regular course of business of the limited liability company;
- (2) is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a business relationship, or an organization to which the limited liability company has the power to make donations;
- (3) is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or
- (4) has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons, or the unanimous affirmative vote of all members, whether or not ordinarily entitled to vote.

[For text of subds 2 and 3, see M.S.1992]

History: 1993 c 137 s 41

322B.696 ADVANCES.

A limited liability company may, without a vote of the governors or its members, advance money to its members who provide services, governors, managers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

History: 1993 c 137 s 42

322B.699 INDEMNIFICATION.

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

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

(c) "Official capacity" means (1) with respect to a governor, the position of governor in a limited liability company, (2) with respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of governors, the employment relationship undertaken by an employee of the limited liability company, or the scope of the services provided by members of the limited liability company who provide services to the limited liability company, and (3) with respect to a governor, manager, member, or employee of the limited liability company who, while a member, governor, manager, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

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

(e) "Special legal counsel" means counsel who has not represented the limited liability company or a related organization, or a governor, manager, member of a committee of the board of governors, or employee, whose indemnification is in issue.

[For text of subds 2 to 9, see M.S.1992]

History: 1993 c 137 s 43

322B.77 TRANSFER OF ASSETS AND WHEN PERMITTED.

Subdivision 1. **Member approval and when not required.** A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a mortgage of or security interest in and otherwise encumber and assign for purposes of security all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, in which case no member approval is required.

[For text of subd 2, see M.S.1992]

Subd. 3. **Signing of documents.** Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current managers or authorized agents or, if the limited liability company no longer exists, by its last managers.

[For text of subd 4, see M.S.1992]

History: 1993 c 137 s 44,45

322B.80 DISSOLUTION.

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

(1) when the period fixed in the articles of organization for the duration of the limited liability company expires;

- (2) by order of a court pursuant to sections 322B.833 and 322B.843;
- (3) by action of the organizers pursuant to section 322B.803;
- (4) by action of the members pursuant to section 322B.806; or
- (5) upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:
 - (i) death of any member;
 - (ii) retirement of any member;
 - (iii) resignation of any member;
 - (iv) redemption of a member's complete membership interest;
 - (v) assignment of a member's governance rights under section 322B.313 which leaves the assignor with no governance rights;
 - (vi) a buy-out of a member's membership interest under section 322B.833 that leaves that member with no governance rights;
 - (vii) expulsion of any member;
 - (viii) bankruptcy of any member;
 - (ix) dissolution of any member;
 - (x) a merger in which the limited liability company is not the surviving organization;
 - (xi) an exchange in which the limited liability company is not the acquiring organization; or
 - (xii) the occurrence of any other event that terminates the continued membership of a member in the limited liability company,

but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if (A) either there are at least two remaining members or a new member is admitted as provided in section 322B.11, and (B) the existence and business of the limited liability company is continued either by the consent of all the remaining members under a right to consent stated in the articles of organization and the consent is obtained no later than 90 days after the termination of the continued membership or under a separate right to continue stated in the articles of organization.

[For text of subd 2, see M.S.1992]

Subd. 3. Security interests. Notwithstanding any provision of law, articles of organization, member control agreement, operating agreement, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights, or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights, or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with chapter 336.

History: 1993 c 137 s 46,47

322B.873 DISPOSITION OF ASSETS UPON DISSOLUTION.

Subdivision 1. Disposition upon liquidation. Subject to subdivision 4, except when the business of a dissolved limited liability company is being continued under subdivision 2 or when the dissolved limited liability company is being wound up and terminated under section 322B.81, subdivision 3, the assets of the dissolved limited liability company must be disposed of to satisfying liabilities according to the following priorities:

- (1) to creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 322B.51 or termination distributions under section 322B.50;

(2) unless otherwise provided in the articles of organization, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 322B.50 or 322B.51; and

(3) unless otherwise provided in the articles of organization, to members first for a return of their contributions, as restated from time to time under section 322B.41, and secondly respecting their membership interests in the proportions in which the members share in distributions.

Subd. 2. Disposition under a business continuation agreement. If a business continuation agreement exists, then after dissolution the board of governors shall resolve to implement the business continuation agreement and the assets of the dissolved limited liability company shall be disposed of according to that agreement, except:

(1) members and former members shall have dissenters' rights as provided in sections 322B.383 and 322B.386, but:

(i) no dissenters' rights shall exist if the business of the dissolved limited liability company is being continued pursuant to a business continuation agreement made after the dissolution, and

(ii) any dissenters' rights that do exist are limited by subdivisions 3 and 4; and

(2) if the business of the dissolved limited liability company is being continued, but not through a merger under section 322B.81, subdivision 3, the dissolved limited liability company shall comply with either section 322B.816 or 322B.82.

Subd. 3. Limitations on dissenters' rights. If a person has agreed in a business continuation agreement to waive dissenters' rights and nonetheless asserts dissenters' rights under subdivision 2:

(1) those rights must be honored; but

(2) unless the business continuation agreement provides otherwise, including providing for installment payments:

(i) in determining the fair value of the membership interest, the value of the good will of the business of the dissolved limited liability company must not be considered; and

(ii) the payment due the dissenter is subject to an offset equal to:

(A) any amount owed to the limited liability company by the member;

(B) the amount of damages, if any, suffered by the limited liability company as a result of the dissenter's breach of the business continuation agreement; and

(C) the amount of other damages, if any, provided for in subdivision 4.

Subd. 4. Damages and offsets for wrongful dissociation and breach of a member control agreement. A member who wrongfully resigns or retires is liable to the limited liability company for any damages caused by the member's wrongful resignation or retirement. Any member who breaches a member control agreement is liable to the limited liability company for any damages caused by the breach. Any payment due a member under this section, including payments to dissenters due to winding up merger under section 322B.81, subdivision 3, is subject to offset these damages.

History: 1993 c 137 s 48

322B.901 FOREIGN LIMITED LIABILITY PARTNERSHIPS CONSIDERED FOREIGN LIMITED LIABILITY COMPANIES.

For the purposes of sections 322B.90 to 322B.955, the term "foreign limited liability company" includes a foreign limited liability partnership organized for profit that is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability company may be organized under this chapter or for which a professional limited liability company may be organized under chapter 319A.

History: 1993 c 137 s 49

322B.91 APPLICATION FOR CERTIFICATE OF AUTHORITY.

Subdivision 1. **Application information.** Before transacting business in this state, a foreign limited liability company shall obtain a certificate of authority. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign limited liability company is organized and an application executed by an authorized person and setting forth:

(1) the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;

(2) the jurisdiction of its organization;

(3) the name and business address of the proposed registered agent in this state, which agent shall be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state;

(4) the address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal place of business of the foreign limited liability company; and

(5) the date the foreign limited liability company expires in the jurisdiction of its organization.

[For text of subd 2, see M.S.1992]

History: 1993 c 137 s 50

322B.92 AMENDMENTS TO THE CERTIFICATE OF AUTHORITY.

If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the secretary of state:

(1) in the case of a change in its name, a termination or a merger, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized; or

(2) in the case of a change in the name or address of the registered agent required to be maintained by section 322B.925, an amendment to the certificate of authority signed by an authorized person.

History: 1993 c 137 s 51

322B.93 CERTIFICATE OF WITHDRAWAL.

A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, which must set forth:

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

(2) that the limited liability company is not transacting business in this state;

(3) that the limited liability company surrenders its authority to transact business in this state;

(4) that the limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the limited liability company was authorized to transact business in this state may be made on the limited liability company by service upon the secretary of state; and

(5) a post office address to which a person may mail a copy of any process against the limited liability company.

The filing with the secretary of state of a certificate of termination or a certificate of merger if the limited liability company is not the surviving organization from the proper officer of the state or country under the laws of which the limited liability company is organized constitutes a valid application of withdrawal and the authority of the limited liability company to transact business in this state shall cease upon filing of the certificate.

History: 1993 c 137 s 52

322B.935 REVOCATION OF CERTIFICATE OF AUTHORITY.

[For text of subd 1, see M.S.1992]

Subd. 2. Revocation notice. No certificate of authority of a foreign limited liability company shall be revoked by the secretary of state unless:

(1) the secretary has given the foreign limited liability company not less than 60 days' notice by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the office address in the jurisdiction of organization; and

(2) during the 60-day period, the foreign limited liability company has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

Subd. 3. Effective date. Upon the expiration of 60 days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a certificate of revocation and shall mail the certificate to the address of the principal place of business or the office required to be maintained in the jurisdiction of organization of the foreign limited liability company.

History: 1993 c 137 s 53,54

322B.960 BIENNIAL REGISTRATION.

Subdivision 1. Information required. Starting January 1, 1995, a limited liability company, whether domestic or foreign, shall once every other year file with the secretary of state a registration containing:

- (a) the name of the limited liability company;
- (b) the alternate name, if any, a foreign limited liability company has adopted for use in this state;
- (c) the address of its registered office;
- (d) the name of its registered agent, if any;
- (e) the jurisdiction of organization;
- (f) the name and business address of the manager or other person exercising the principal functions of the chief manager of the limited liability company; and
- (g) the signature of a person authorized to sign the registration on behalf of the limited liability company.

Subd. 2. Due date for filing. A registration is due two years from: (1) the date the limited liability company is formed or registered with the secretary of state; or (2) the date of the last registration. The biennial registration will be due on or before the anniversary date of formation or registration in Minnesota. The secretary of state shall mail a registration form to each limited liability company no less than 90 days before the registration is due. The registration form must be sent to the last registered office address filed with the secretary of state.

Subd. 3. Amendments on registration form. A domestic limited liability company which needs to amend its name, registered office address, or registered agent may make these amendments on the biennial registration form. The fee listed in section 322B.175 applies to these amendments.

Subd. 4. Loss of good standing. A limited liability company that fails to file a registration pursuant to the requirements of subdivision 1 loses its good standing in this state. The limited liability company may regain its good standing in this state by filing a single annual registration and paying a \$50 fee.

Subd. 5. Administrative termination. (a) If a domestic limited liability company has not filed a registration during a reporting period, the secretary of state shall notify the limited liability company that it will be administratively terminated if the biennial registration is not filed by the due date of the next registration. This notice must be sent to the limited liability company at its registered office address of record as part of the registration form. If the limited liability company does not file the biennial registration by the due date, the secretary of state shall administratively terminate the existence of the limited liability company. The secretary of state shall issue a certificate of administrative termination which shall be sent to the limited liability company at its registered office address. A copy of the certificate must be filed with the secretary of state.

(b) If a non-Minnesota limited liability company has not filed a registration during a reporting period, the secretary of state shall notify the limited liability company that its authority to do business in Minnesota will be revoked if the biennial registration is not filed by the due date of the next registration. This notice must be sent to the limited liability company at its registered office address of record as part of the registration form. If the limited liability company does not file the biennial registration by the due date, the secretary of state shall revoke the authority of the limited liability company to do business in Minnesota. The secretary of state shall issue a certificate of revocation which shall be sent to the limited liability company at its registered office address. A copy of the certificate must be filed with the secretary of state.

Subd. 6. Reinstatement. If a limited liability company is administratively terminated or has its authority to do business in Minnesota revoked, it may retroactively reinstate its existence or authority to do business by filing a single biennial registration and paying a \$50 fee but only within one year of the date of the termination or revocation.

(a) For a domestic limited liability company, filing the biennial registration with the secretary of state:

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

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

(3) restores to the limited liability company all assets and rights of the limited liability company and its members to the extent they were held by the limited liability company and its members before the administrative termination occurred, except to the extent that assets or rights were affected by acts occurring after the termination, sold, or otherwise distributed after that time.

(b) For a non-Minnesota limited liability company, filing the biennial registration restores the limited liability company's ability to do business in Minnesota and the rights and privileges which accompany that authority.

History: 1993 c 131 s 1