

CHAPTER 322B

LIMITED LIABILITY COMPANIES

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322B.03 DEFINITIONS.

[For text of subs 1 to 3, see M.S.1998]

Subd. 4. [Repealed, 1999 c 85 art 2 s 95]

Subd. 5. [Repealed, 1999 c 85 art 2 s 95]

[For text of subs 6 to 8, see M.S.1998]

Subd. 9. [Repealed, 1999 c 85 art 2 s 95]

[For text of subs 10 and 11, see M.S.1998]

Subd. 12. **Constituent organization.** "Constituent organization" means a limited liability company or a corporation or a foreign corporation that:

(1) in a merger is either the surviving organization or an organization that is merged into the surviving organization; or

(2) in an exchange is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

[For text of subs 13 to 15, see M.S.1998]

Subd. 16. [Repealed, 1999 c 85 art 2 s 95]

[For text of subs 17 to 29, see M.S.1998]

Subd. 30. **Member.** "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company. A person may be a member without having voting rights.

[For text of subs 31 and 32, see M.S.1998]

Subd. 33. **Bylaws.** "Bylaws" means rules, resolutions, or other provisions that:

(1) relate to the management of the business or the regulation of the affairs of the limited liability company; and

(2) have been made expressly part of the bylaws by the action, taken from time to time under section 322B.603, by the board of governors or the members.

[For text of subs 34 to 43, see M.S.1998]

Subd. 44. **Series.** "Series" means a category of membership interests, within a class of membership interests, that have some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

Subd. 45. **Signed.** (a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44; subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization, a member control agreement, or bylaws or a resolution approved by the governors as required by section 322B.653 or the members as required by section 322B.346.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

[For text of subs 45a to 51, see M.S.1998]

History: 1999 c 85 art 2 s 1-4,96

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; and

(4) a statement of the period of existence for the limited liability company if different from the period set forth in section 322B.20, subdivision 2.

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);

(3) the power to adopt, amend, or repeal the bylaws 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 value of previous contributions is to be restated when a new contribution is accepted (section 322B.41);

(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);

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

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

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

Subd. 3. Statutory provisions that may be modified either in articles of organization, a member control agreement, or in the bylaws. The following provisions govern a limited liability company unless modified in the articles of organization, a member control agreement under section 322B.37 or in the bylaws:

(1) governors serve for an indefinite term that expires at the next regular meeting of members (section 322B.616);

(2) the compensation of governors is fixed by the board of governors (section 322B.623);

(3) a certain method must be used for removal of governors (section 322B.636);

(4) a certain method must be used for filling board of governor vacancies (section 322B.64);

(5) if the board of governors fails to select a place for a board meeting, it must be held at the principal executive office (section 322B.643, subdivision 1);

(6) the notice of a board of governors meeting need not state the purpose of the meeting (section 322B.643, subdivision 3);

(7) a majority of the board of governors is a quorum for a board meeting (section 322B.65);

(8) a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present (section 322B.66, subdivision 2);

(9) the board may establish a special litigation committee (section 322B.66);

(10) the chief manager and treasurer have specified duties, until the board of governors determines otherwise (section 322B.673);

(11) managers may delegate some or all of their duties and powers, if not prohibited by the board of governors from doing so (section 322B.689);

(12) regular meetings of members need not be held, unless demanded by a member under certain conditions (section 322B.333);

(13) in all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members (section 322B.34, subdivision 2);

(14) for a quorum at a members' meeting there is required a majority of the voting power of the membership interests entitled to vote at the meeting (section 322B.353);

(15) the board of governors may fix a date up to 60 days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting (section 322B.356, subdivision 1);

(16) indemnification of certain persons is required (section 322B.699);

(17) the board of governors may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement (section 322B.54, subdivision 1); and

(18) members have no right to interim distributions except as provided through the bylaws or an act of the board of governors (section 322B.51).

Subd. 4. Optional provisions and specific subjects. The provisions in clauses (1), (7), (15), (16), and (18) may be included in the articles of organization or a member control agreement under section 322B.37.

The provisions in clauses (2) to (6), (8) to (14), and (17) may be included in the articles of organization, a member control agreement under section 322B.37 or the bylaws:

(1) the persons to serve as the first board of governors may be named in the articles of organization (section 322B.606, subdivision 1);

(2) a manner for increasing or decreasing the number of governors may be provided (section 322B.61);

(3) additional qualifications for governors may be imposed (section 322B.613);

(4) governors may be classified (section 322B.626);

(5) the day or date, time, and place of board of governors meetings may be fixed (section 322B.643, subdivision 1);

(6) absent governors may be permitted to give written consent or opposition to a proposal (section 322B.646);

(7) a larger than majority vote may be required for board of governor action (section 322B.653);

(8) authority to sign and deliver certain documents may be delegated to a manager or agent of the limited liability company other than the chief manager (section 322B.673, subdivision 2);

(9) additional managers may be designated (section 322B.676);

(10) additional powers, rights, duties, and responsibilities may be given to managers (section 322B.676);

(11) a method for filling vacant offices may be specified (section 322B.686, subdivision 3);

(12) the day or date, time, and place of regular member meetings may be fixed (section 322B.333, subdivision 3);

(13) certain persons may be authorized to call special meetings of members (section 322B.336, subdivision 1);

(14) notices of member meetings may be required to contain certain information (section 322B.34, subdivision 3);

(15) a larger than majority vote may be required for member action (section 322B.346);

(16) voting rights may be granted in or pursuant to the articles of organization to persons who are not members (section 322B.356, subdivision 3);

(17) limited liability company actions giving rise to dissenter rights may be designated (section 322B.386, subdivision 1, paragraph (e)); and

(18) a governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited.

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.

[For text of subs 5 and 6, see M.S.1998]

History: 1999 c 85 art 2 s 5-7,96; 1999 c 249 s 1

322B.155 CLASS OR SERIES VOTING ON AMENDMENTS.

The owners of the outstanding membership interests of a class or series are entitled to vote as a class or series upon a proposed amendment to the articles of organization, whether or not entitled to vote on the amendment by the provisions of the articles of organization, if the amendment would:

(1) effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series;

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

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

(4) change the membership interests of the class or series into the same or a different number of membership interests of another class or series;

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

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

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

(8) cancel or otherwise affect distributions on the membership interests of the class or series.

History: 1999 c 85 art 2 s 8

322B.20 POWERS.

Subdivision 1. Generally and limitations. A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization. The articles may not limit the powers stated in subdivision 3. A member control agreement may limit the powers stated in subdivisions 4 to 24.

Subd. 2. Duration. (a) A limited liability company whose existence begins before August 1, 1999, has a limited duration of 30 years from the date the articles of organization are filed with the secretary of state, unless the articles of organization state a shorter or longer period of duration, which may be perpetual.

(b) A limited liability company whose existence begins on or after August 1, 1999, has perpetual duration.

[For text of subs 3 to 15, see M.S.1998]

Subd. 16. Bylaws. A limited liability company may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the limited liability company as provided in section 322B.603.

[For text of subs 17 to 24, see M.S.1998]

History: 1999 c 85 art 2 s 9,10,96

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

[For text of subd 1, see M.S.1998]

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, if any, 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.

[For text of subd 3, see M.S.1998]

History: 1999 c 85 art 2 s 11

322B.306 TERMINATION OF A MEMBERSHIP INTEREST.

Subdivision 1. **Termination defined; member's power to terminate.** The continued membership of a member in a limited liability company is terminated by:

- (i) the member's death;
- (ii) the member's retirement;
- (iii) the member's resignation;
- (iv) redemption of the member's complete membership interest;
- (v) an assignment of the member's governance rights under section 322B.313 which leaves the assignor with no governance rights;
- (vi) a buyout of a member's membership interest under section 322B.833 that leaves that member with no governance rights;
- (vii) the member's expulsion;
- (viii) the member's bankruptcy;
- (ix) the dissolution of a member that is an organization;
- (x) a merger in which the limited liability company is not the surviving organization; or
- (xi) the occurrence of any other event that terminates the continued membership of a member in the limited liability company.

A member always has the power, though not necessarily the right, to terminate its membership by resigning or retiring at any time.

Subd. 2. **When expulsion permitted.** Unless otherwise provided in the articles of organization or a member control agreement, a member may not be expelled.

Subd. 3. **Effect of termination of membership on the rights of the terminated member.** If for any reason the continued membership of a member is terminated, then subject to the articles of organization and any member control agreement:

(1) if the termination does not result in the dissolution of the limited liability company, 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 the termination results in the dissolution of the limited liability company, 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, 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.

History: 1999 c 85 art 2 s 12

322B.31 ASSIGNMENT OF FINANCIAL RIGHTS.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. Restrictions of assignment of financial rights. (a) A restriction on the assignment of financial rights may be imposed in the articles, in a member control agreement, in the bylaws, 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, bylaws, 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: 1999 c 85 art 2 s 13,96

322B.313 ASSIGNMENT OF GOVERNANCE RIGHTS.

[For text of subd 1, see M.S.1998]

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. Except as otherwise set forth in the articles of organization or a member control agreement, 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.

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.

[For text of subs 4 to 6, see M.S.1998]

Subd. 7. Security interest. 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 subdivision 2. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by subdivision 2. If a secured party has a security interest in both 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 the consents required by subdivision 2 applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights. Notwithstanding any provision of law, articles of organization,

member control agreement, bylaws, 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: 1999 c 85 art 2 s 14-16,96

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

[For text of subd 1, see M.S.1998]

Subd. 2. **When membership is terminated.** If an event referred to in subdivision 1 causes the termination of a member's membership interest and the termination does not result in dissolution, then subject to the articles of organization and any member control agreement:

(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: 1999 c 85 art 2 s 17

322B.326 SHARING OF PROFITS AND LOSSES.

Unless otherwise provided in the articles of organization, a member control agreement, or by the board of governors under section 322B.40, subdivisions 5 and 6, the profits and losses of a limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the required records.

History: 1999 c 85 art 2 s 18

322B.33 PREEMPTIVE RIGHTS.

Subdivision 1. **Presumption and modification.** Unless denied or limited in the articles of organization, a member control agreement, or by the board of governors pursuant to section 322B.40, subdivision 5, clause (2), a member of a limited liability company has the preemptive rights provided in this section.

[For text of subs 2 and 3, see M.S.1998]

Subd. 4. **Exemptions.** Unless otherwise provided in the articles of organization or a member control agreement, no preemptive rights according to this section arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:

(1) to be made in a form other than money;

(2) to be made or reflected pursuant to a plan of merger or exchange;

(3) to be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;

(4) to be made pursuant to a previously made contribution allowance agreement; or

(5) to be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

[For text of subs 5 to 10, see M.S.1998]

History: 1999 c 85 art 2 s 19,20

322B.333 REGULAR MEETINGS OF MEMBERS.

Subdivision 1. **Frequency.** Regular meetings of members may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles of organization, a member control agreement, or bylaws or by subdivision 2.

[For text of subd 2, see M.S.1998]

Subd. 3. **Time and place.** A regular meeting, if any, must be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles, a member control agreement, or bylaws, except that a meeting called by or at the demand of a member pursuant to subdivision 2 must be held in the county where the principal executive office of the limited liability company is located.

[For text of subd 4, see M.S.1998]

History: 1999 c 85 art 2 s 21,22,96

322B.336 SPECIAL MEETINGS OF MEMBERS.

Subdivision 1. **Who may call.** Special meetings of the members may be called for any purpose or purposes at any time, by:

- (1) the chief manager;
- (2) the treasurer;
- (3) two or more governors;
- (4) a person authorized in the articles, a member control agreement, or bylaws to call special meetings; or
- (5) a member or members owning ten percent or more of the voting power of all membership interests entitled to vote.

[For text of subd 2, see M.S.1998]

Subd. 3. **Time and place.** Special meetings must be held on the date and at the time and place fixed by the chief manager, the treasurer, the board of governors, or a person authorized by the articles, a member control agreement, or bylaws to call a meeting, except that a special meeting called by or at the demand of a member or members pursuant to subdivision 2 must be held in the county where the principal executive office is located.

[For text of subd 4, see M.S.1998]

History: 1999 c 85 art 2 s 23,24,96

322B.34 NOTICE.

[For text of subd 1, see M.S.1998]

Subd. 2. **When given.** In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization, a member control agreement, or bylaws, and not more than 60 days before the date of the meeting.

Subd. 3. **Contents.** The notice must contain the date, time, and place of the meeting, the information with respect to dissenters' rights required by section 322B.386, subdivision 2, if applicable, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles of organization, a member control agreement, or bylaws or considered necessary or desirable by the board of governors or by any other person or persons calling the meeting.

[For text of subd 4, see M.S.1998]

History: 1999 c 85 art 2 s 25,26,96

322B.343 ELECTRONIC COMMUNICATIONS.

Subdivision 1. **Electronic conferences.** If and to the extent authorized in a member control agreement, the bylaws, or by the board of governors of a closely held limited liability

company, a conference among members by any means of communication through which the members may simultaneously hear each other during the conference constitutes a regular or special meeting of members, if the same notice is given of the conference to every owner of membership interests entitled to vote as would be required by this chapter for a meeting, and if the membership interests held by the members participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

Subd. 2. Participation by electronic means. If and to the extent authorized in a member control agreement, the bylaws, or by the board of governors of a closely held limited liability company, a member may participate in a regular or special meeting of members not described in subdivision 1 by any means of communication through which the member, other members so participating, and all members physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

[For text of subd 3, see M.S.1998]

History: 1999 c 85 art 2 s 27,28,96

322B.346 ACT OF MEMBERS.

Subdivision 1. Majority required. The members shall take action by the affirmative vote of the owners of the greater of: (1) a majority of the voting power of the membership interests present and entitled to vote on that item of business; or (2) a majority of the voting power that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles of organization, or a member control agreement, require a larger proportion. If the articles or a member control agreement require a larger proportion than is required by this chapter for a particular action, the articles or the member control agreement control.

Subd. 2. Voting by class or series. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, a member control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests present of that class or series, or of the total outstanding membership interests of that class or series, as the proportion required pursuant to subdivision 1, unless the articles or the member control agreement require a larger proportion. Unless otherwise stated in the articles, a member control agreement, or bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 322B.353.

History: 1999 c 85 art 2 s 29,96

322B.35 ACTION WITHOUT A MEETING.

Subdivision 1. Method. An action required or permitted to be taken at a meeting of the members may be taken by written action signed by all of the members. If the articles or a member control agreement so provide, any action may be taken by written action signed by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

[For text of subds 2 and 3, see M.S.1998]

History: 1999 c 85 art 2 s 30

322B.353 QUORUM.

The owners of a majority of the voting power of the membership interests entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller pro-

portion is provided in the articles, a member control agreement, or bylaws. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of members originally present leaves less than the proportion otherwise required for a quorum.

History: 1999 c 85 art 2 s 31,96

322B.356 VOTING RIGHTS.

Subdivision 1. **Determination.** The board of governors may fix, or authorize a manager to fix, a date not more than 60 days, or a shorter time period provided in the articles of organization, a member control agreement, or bylaws, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

Subd. 2. **Voting power.** Unless otherwise provided in the articles, a member control agreement, or by the board of governors under section 322B.40, subdivisions 5 and 6, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.

Subd. 3. **Nonmembers.** The articles of organization or a member control agreement may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this section.

[For text of subs 4 and 5, see M.S.1998]

History: 1999 c 85 art 2 s 32-34,96

322B.363 PROXIES.

[For text of subd 1, see M.S.1998]

Subd. 2. **Duration.** The appointment of a proxy is valid for 11 months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the membership interests or the limited liability company.

Subd. 3. **Termination.** An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with a manager of the limited liability company, or by filing a new written appointment of a proxy with a manager of the limited liability company. Termination in either manner revokes all prior proxy appointments and is effective when filed with a manager of the limited liability company.

[For text of subs 4 to 7, see M.S.1998]

Subd. 8. [Repealed, 1999 c 85 art 2 s 95]

History: 1999 c 85 art 2 s 35,36

322B.366 MEMBER VOTING AGREEMENTS.

Subdivision 1. **General rule.** A written agreement among persons who are then members or who have signed contribution agreements, relating to the voting of their membership interests, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 322B.363 regarding proxies.

Subd. 2. [Repealed, 1999 c 85 art 2 s 95]

History: 1999 c 85 art 2 s 37

322B.37 MEMBER CONTROL AGREEMENTS.

Subdivision 1. **Authorization and scope.** A member control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided

in subdivision 2 and enforceable as provided in subdivision 3. A member control agreement valid under subdivision 2 may relate to, without limitation, the management of the limited liability company's business, the declaration and payment of distributions, the sharing of profits and losses, the election of governors or managers, the employment of members and others by the limited liability company, the relations among members and persons who have signed contribution agreements (including the termination of continued membership), the dissolution, termination, and liquidation of the limited liability company (including the continuation of the limited liability company's business through a successor organization or individual), and the arbitration of disputes. Wherever this chapter provides that a particular result may or must be obtained through a provision in the articles of organization (other than a provision required by section 322B.115, subdivision 1, to be contained in the articles), in the bylaws, or by an act of the board, the same result can be accomplished through a member control agreement valid under this section or through a procedure established by a member control agreement valid under this section. A member control agreement may allocate to the members authority ordinarily exercised by the board of governors, allocate to the board of governors authority ordinarily exercised by the members, or structure the governance of the limited liability company in any agreed fashion and may waive, in whole or in part, a member's dissenting rights under sections 322B.383 and 322B.386.

Subd. 2. Method of approval. A member control agreement as described in subdivision 1 is valid if the agreement is in writing and is signed by the persons who, on the date the agreement first becomes effective, comprise all the members of the limited liability company (regardless of voting power), and all persons who are party to contribution agreements that on that date have not yet been fully performed (regardless of whether those parties will, when members, have voting power). A member control agreement may also include as parties persons who are neither members nor parties to a contribution agreement. A member control agreement may provide for its amendment through nonunanimous means.

Subd. 3. Enforceability and copies. (a) A member control agreement valid under subdivisions 1 and 2 is enforceable by persons who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the member control agreement. A copy of the member control agreement must be filed with the limited liability company. The limited liability company shall note in its required records that the members' interests are governed by a member control agreement entered into under this section.

(b) A member control agreement valid under subdivisions 1 and 2 is specifically enforceable.

(c) A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member control agreement from the limited liability company at the company's expense.

Subd. 4. Liability. If a member control agreement authorized under this section takes away from any person any of the authority and responsibility which that person would otherwise possess under this chapter, the effect of the member control agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.

Subd. 5. Other agreements. This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

History: 1999 c 85 art 2 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 bylaws;

(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 subs 2 to 6, see M.S.1998]

History: 1999 c 85 art 2 s 96

322B.383 RIGHTS OF DISSENTING MEMBERS.

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

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

- (i) alters or abolishes a preferential right of the membership interests;
- (ii) creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;
- (iii) alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;
- (iv) excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;
- (v) changes a member's right to resign or retire;
- (vi) establishes or changes the conditions for or consequences of expulsion;
- (2) a sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company, but not including a transaction permitted without member approval in section 322B.77, subdivision 1, or a disposition in dissolution described in section 322B.813, subdivision 4, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;
- (3) a plan of merger to which the limited liability company is a constituent organization;
- (4) a plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan; or
- (5) any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member control agreement, the bylaws, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests.

[For text of subs 2 and 3, see M.S.1998]

History: 1999 c 85 art 2 s 39,96

322B.386 PROCEDURES FOR ASSERTING DISSENTERS' RIGHTS.

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

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

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

(d) "Interest" means interest beginning five days after the effective date of the limited liability company action referred to in section 322B.383, 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.

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

- (1) the membership of that former member has terminated causing dissolution; and
- (2) the dissolved limited liability company has then entered into a winding up merger under section 322B.81, subdivision 3.

Subd. 2. **Notice of action.** If a limited liability company calls a member meeting at which any action described in section 322B.383, subdivision 1, is to be voted upon, the notice of the meeting must inform each member of the right to dissent and must include a copy of section 322B.383 and this section and a brief description of the procedure to be followed under these sections. For members who have assigned some or all of their financial rights, the description must also include the procedures under subdivision 9.

[For text of subd 3, see M.S.1998]

Subd. 4. Notice of procedure. (a) After the proposed action has been approved by the board of governors and, if necessary, the members, the limited liability company shall send to all members who have complied with subdivision 3 and to all members entitled to dissent if no member vote was required, a notice that contains:

(1) the address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;

(2) a form to be used to certify the date on which the member acquired the membership interests and to demand payment; and

(3) a copy of section 322B.383 and this section and a brief description of the procedures to be followed under these sections.

(b) In order to receive the fair value of the membership interests, a dissenting member must demand payment within 30 days after the notice required by paragraph (a) was given, but the dissenter retains all other rights of a member until the proposed action takes effect.

Subd. 5. Payment. (a) After the limited liability company action takes effect, or after the limited liability company receives a valid demand for payment, whichever is later, the limited liability company shall remit to each dissenting member who has complied with subdivisions 3 and 4 the amount the limited liability company estimates to be the fair value of the membership interests, plus interest, accompanied by:

(1) the limited liability company's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the effective date of the limited liability company action, together with the latest available interim financial statements;

(2) an estimate by the limited liability company of the fair value of the membership interests and a brief description of the method used to reach the estimate; and

(3) a copy of section 322B.383 and this section and a brief description of the procedure to be followed in demanding supplemental payment.

(b) The limited liability company may withhold the remittance described in paragraph (a) from a person who was not a member on the date the action dissented from was first announced to the public. If the dissenter has complied with subdivisions 3 and 4, the limited liability company shall forward to the dissenter the materials described in paragraph (a), a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subdivision 6. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subdivisions 7 and 8 apply.

[For text of subs 6 to 9, see M.S.1998]

History: 1999 c 85 art 2 s 40-43

322B.40 AUTHORIZATION, FORM AND ACCEPTANCE OF CONTRIBUTIONS.

Subdivision 1. Board of governors may authorize. Subject to any restrictions in the articles of organization or a member control agreement and only when authorized by the board of governors or pursuant to a member control agreement, a limited liability company may accept contributions under subdivisions 2 and 3, make contribution agreements under section 322B.42, and make contribution allowance agreements under section 322B.43.

[For text of subs 2 to 4, see M.S.1998]

Subd. 5. Terms of membership interests. All the membership interests of a limited liability company must:

(1) be of one class, without series, unless the articles of organization or a member control agreement establish, or authorize the board of governors to establish, more than one class or series within classes;

(2) be ordinary membership interests entitled to vote as provided in section 322B.356, and have equal rights and preferences in all matters not otherwise provided for by the board

of governors unless and to the extent that the articles of organization or a member control agreement have fixed the relative rights and preferences of different classes and series; and

(3) share profits and losses as provided in section 322B.326; and be entitled to distributions as provided in sections 322B.50, 322B.51, and 322B.873, subdivision 1, clause (3).

Subd. 6. Procedure for fixing terms. (a) Subject to any restrictions in the articles of organization or a member control agreement, the power granted in subdivision 5 may be exercised by a resolution or resolutions establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles of organization, in a member control agreement, or by resolution of the board of governors:

(1) may be made dependent upon facts ascertainable outside the articles of organization, or outside the resolution or resolutions establishing the class or series, if the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles of organization or in the resolution or resolutions establishing the class or series; and

(2) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company in connection with the establishment of the class or series if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(b) A statement setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization or a member control agreement. However, where the members have received notice of the creation of membership interests with rights or preferences not set forth in the articles of organization or a member control agreement before the acceptance of the contributions with respect to the membership interests, the statement may be filed any time within one year after the acceptance of contributions. The resolution is effective when the statement has been filed with the secretary of state; or, if it is not required to be filed with the secretary of state before the acceptance of contributions, on the date of its adoption by the governors.

(c) A statement filed with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles of organization for purposes of sections 322B.155 and 322B.383.

[For text of subd. 7, see M.S.1998]

History: 1999 c 85 art 2 s 44-46

322B.41 RESTATEMENT OF VALUE OF PREVIOUS CONTRIBUTIONS.

[For text of subs. 1 and 2, see M.S.1998]

Subd. 3. Restatement as to the particular series or class to which the new contribution pertains. Unless otherwise provided in the articles of organization or a member control agreement, this subdivision states the method of restating the value of old contributions that pertain to the same series or class to which the new contribution pertains:

(1) state the value the limited liability company has accorded to the new contribution under section 322B.40, subdivision 3, clause (1);

(2) determine what percentage the value stated under clause (1) will constitute, after the restatement required by this subdivision, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains;

(3) divide the value stated under clause (1) by the percentage determined under clause (2), yielding the total value, after the restatement required by this subdivision, of all contributions pertaining to the particular series or class;

(4) subtract the value stated under clause (1) from the value determined under clause (3), yielding the total value, after the restatement required by this subdivision, of all the old contributions pertaining to the particular series or class;

(5) subtract the value, as reflected in the required records before the restatement required by this subdivision, of the old contributions from the value determined under clause (4), yielding the value to be allocated among and added to the old contributions pertaining to the particular series or class; and

(6) allocate the value determined under clause (5) proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the required records accordingly.

The values determined under clause (5) and allocated and added under clause (6) may be positive, negative, or zero.

Subd. 4. Restatement method for other series or classes. Unless otherwise provided in the articles of organization or a member control agreement, this subdivision states the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains;

(1) determine the percentage by which the restatement under subdivision 3 has changed the total contribution value reflected in the required records for the series or class to which the new contribution pertains; and

(2) as to each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the required records by the percentage determined under clause (1). The percentage determined under clause (1) may be positive, negative, or zero.

[For text of subd 5, see M.S.1998]

History: 1999 c 85 art 2 s 47,48

322B.42 CONTRIBUTION AGREEMENTS.

[For text of subs 1 to 4, see M.S.1998]

Subd. 5. Restrictions on assignment. Unless otherwise provided in the articles of organization or a member control agreement, a would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

History: 1999 c 85 art 2 s 49

322B.43 CONTRIBUTION ALLOWANCE AGREEMENTS.

Subdivision 1. Agreements permitted. Subject to any restrictions in the articles of organization or a member control agreement, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors.

[For text of subd 2, see M.S.1998]

Subd. 3. Restrictions on assignment. Unless otherwise provided in the articles of organization or a member control agreement, a would-be contributor's rights under a contribution allowance agreement may not be assigned in whole or in part to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

History: 1999 c 85 art 2 s 50,51

322B.50 SHARING OF DISTRIBUTIONS.

Unless otherwise provided in the articles of organization, or a member control agreement, or by the board of governors under section 322B.40, subdivisions 5 and 6, distributions of cash or other assets of a limited liability company, including distributions on termination of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the required records.

History: 1999 c 85 art 2 s 52

322B.51 INTERIM DISTRIBUTIONS.

Except as provided in the articles of organization or a member control agreement, a member is entitled to receive distributions before the limited liability company's termination only as specified in the bylaws or by the act of the board of governors.

History: 1999 c 85 art 2 s 53,96

322B.52 DISTRIBUTION IN KIND.

Except as provided in the articles of organization or a member control agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in the articles of organization or a member control agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

History: 1999 c 85 art 2 s 54

322B.54 LIMITATIONS ON DISTRIBUTION.

Subdivision 1. **When distributions are permitted.** (a) The board of governors may authorize and cause the limited liability company to make a distribution only if the board of governors determines, in accordance with subdivision 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board of governors does not know before the distribution is made that the determination was or has become erroneous.

(b) The limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.

(c) The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subdivision 3.

(d) The right of the board of governors to authorize, and the limited liability company to make, distributions may be prohibited, limited, or restricted by the articles of organization, a member control agreement, or bylaws or an agreement.

[For text of subs 2 to 4, see M.S.1998]

History: 1999 c 85 art 2 s 55,96

322B.56 LIABILITY OF GOVERNORS FOR ILLEGAL DISTRIBUTIONS.

Subdivision 1. **Liability.** In addition to any other liabilities, a governor who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 322B.54, subdivision 1 or 4, or a restriction contained in the articles of organization, a member control agreement, or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 322B.663, is liable to the limited liability company, its receiver or any other person winding up its affairs jointly and severally with all other governors so liable and to other governors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 322B.54.

[For text of subs 2 to 4, see M.S.1998]

History: 1999 c 85 art 2 s 56,96

322B.60 ORGANIZATION.

[For text of subd 1, see M.S.1998]

Subd. 2. **Meeting.** After the filing of articles of organization, the organizers or the governors named in the articles of organization shall either hold an organizational meeting at the

call of a majority of the organizers or of the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting bylaws, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting. Organizers and governors may waive notice of an organizational meeting in the same manner that a governor may waive notice of meetings of the board under section 322B.643, subdivision 5.

History: 1999 c 85 art 2 s 96

322B.603 BYLAWS.

Subdivision 1. **Generally.** A limited liability company may, but need not, have bylaws, which may, but need not, be known as an operating agreement. The bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with law or the articles of organization. An act of the board under subdivision 2 and of the members under subdivision 3 will be considered part of the bylaws only if the act expressly states that it is intended to constitute or revise the bylaws.

Subd. 2. **Power of board of governors.** Initial bylaws may be adopted pursuant to section 322B.60 by the organizers or by the first board of governors. Unless reserved by the articles of organization or a member control agreement to the members, the power to adopt, amend, or repeal the bylaws is vested in the board of governors. The power of the board of governors is subject to the power of the members, exercisable in the manner provided in subdivision 3; to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board of governors. After the adoption of the initial bylaws, the board of governors shall not adopt, amend, or repeal a bylaws provision fixing a quorum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaws provision to increase the number of governors.

Subd. 3. **Power of members and procedure.** If a member or members owning three percent or more of the voting power of the members entitled to vote propose a resolution for action by the members to adopt, amend, or repeal bylaws provisions adopted, amended, or repealed by the board of governors and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 322B.15, subdivisions 2 to 4, for amendment of the articles of organization.

History: 1999 c 85 art 2 s 57,96

322B.606 BOARD OF GOVERNORS.

Subdivision 1. **Board of governors to manage.** The business and affairs of a limited liability company is to be managed by or under the direction of a board of governors, subject to the provisions of subdivision 2 and section 322B.37. The first board of governors may be named in the articles of organization or a member control agreement or elected by the organizers pursuant to section 322B.60 or by the members.

[For text of subd 2, see M.S.1998]

History: 1999 c 85 art 2 s 58

322B.61 NUMBER.

The board of governors consists of one or more governors. The number of governors must be fixed by or in the manner provided in the articles of organization, a member control

agreement, or the bylaws. The number of governors may be increased or, subject to section 322B.636, decreased at any time by amendment to or in the manner provided in the articles, a member control agreement, or bylaws.

History: 1999 c 85 art 2 s 59,96

322B.613 QUALIFICATIONS AND ELECTION.

Governors must be natural persons. The method of election and any additional qualifications for governors may be imposed by or in the manner provided in the articles, a member control agreement, or bylaws.

History: 1999 c 85 art 2 s 60,96

322B.616 TERMS.

Unless fixed terms are provided for in the articles, a member control agreement, or bylaws, a governor serves for an indefinite term that expires at the next regular meeting of the members. A fixed term of a governor must not exceed five years. A governor holds office for the term for which the governor was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the governor.

History: 1999 c 85 art 2 s 61,96

322B.623 COMPENSATION.

Subject to any limitations in the articles, a member control agreement, or bylaws, the board of governors may fix the compensation of governors.

History: 1999 c 85 art 2 s 62,96

322B.626 CLASSIFICATION OF GOVERNORS.

Governors may be divided into classes as provided in the articles, a member control agreement, or bylaws.

History: 1999 c 85 art 2 s 63,96

322B.63 CUMULATIVE VOTING FOR GOVERNORS.

Subdivision 1. **Voting rights.** Unless the articles of organization or a member control agreement provide that there is no cumulative voting, and except as provided in section 322B.636, subdivision 5, each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting, or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:

(1) the presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and

(2) each member shall cumulate that voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.

Subd. 2. **Modifications.** No amendment to the articles or bylaws that has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

History: 1999 c 85 art 2 s 64,96

322B.636 REMOVAL OF GOVERNORS.

Subdivision 1. **Modification.** The provisions of this section apply unless modified by the articles of organization, a member control agreement, or the bylaws.

[For text of subd 2, see M.S.1998]

Subd. 3. **Removal by members.** Except as provided in subdivision 4, any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote at an election of governors; provided that if a governor has been elected solely by the holders of a class or series of membership interests, as stated in the articles, any member control agreement, or bylaws, then that governor may be removed only by the affirmative vote of the holders of a majority of the voting power of all membership interests of that class or series entitled to vote at an election of that governor.

[For text of subs 4 and 5, see M.S.1998]

History: 1999 c 85 art 2 s 65,66,96

322B.64 VACANCIES.

Unless different rules for filling vacancies are provided for in the articles, a member control agreement, or bylaws:

(1)(i) vacancies on the board of governors resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and

(ii) vacancies on the board of governors resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase; and

(2) each governor elected under this section to fill a vacancy holds office until a qualified successor is elected by the members at the next regular or special meeting of the members.

History: 1999 c 85 art 2 s 67,96

322B.643 BOARD OF GOVERNORS MEETINGS.

Subdivision 1. **Time and place.** Meetings of the board of governors may be held from time to time as provided in the articles of organization, a member control agreement, or bylaws at any place within or without the state that the board of governors may select or by any means described in subdivision 2. If the board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member control agreement, or bylaws provide otherwise.

[For text of subd 2, see M.S.1998]

Subd. 3. **Calling meetings and notice.** Unless the articles of organization, a member control agreement, or bylaws provide for a different time period, a governor may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings under section 322B.60, subdivision 2, at least three days' notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles, a member control agreement, or bylaws require it.

Subd. 4. **Previously scheduled meetings.** If the day or date, time, and place of a board of governors meeting have been provided in the articles, a member control agreement, or bylaws, or announced at a previous meeting of the board of governors, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

[For text of subd 5, see M.S.1998]

History: 1999 c 85 art 2 s 68-70,96

322B.646 ABSENT GOVERNORS.

If the articles of organization, a member control agreement, or bylaws so provide, a governor may give advance written consent or opposition to a proposal to be acted on at a board of governors meeting. If the governor is not present at the meeting, consent or opposition to a

proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a governor present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the governor has consented or objected.

History: 1999 c 85 art 2 s 71,96

322B.65 QUORUM.

A majority, or a larger or smaller proportion or number provided in the articles of organization, a member control agreement, or bylaws, of the governors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the governors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the governors present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

History: 1999 c 85 art 2 s 72,96

322B.653 ACT OF THE BOARD OF GOVERNORS.

The board of governors shall take action by the affirmative vote of the greater of (1) a majority of governors present at a duly held meeting at the time the action is taken, or (2) a majority of the minimum proportion or number of governors that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles, or a member control agreement require the affirmative vote of a larger proportion or number. If the articles or a member control agreement require a larger proportion or number than is required by this chapter for a particular action, the articles or member control agreement control.

History: 1999 c 85 art 2 s 73

322B.656 ACTION WITHOUT A MEETING.

Subdivision 1. **Method.** An action required or permitted to be taken at a board of governors meeting may be taken by written action signed by all of the governors. If the articles or a member control agreement so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of governors that would be required to take the same action at a meeting of the board of governors at which all governors were present.

[For text of subs 2 and 3, see M.S.1998]

History: 1999 c 85 art 2 s 74

322B.66 COMMITTEES.

[For text of subd 1, see M.S.1998]

Subd. 2. **Membership.** Committee members must be natural persons. Unless the articles, or a member control agreement, or bylaws provide for a different membership or manner of appointment, a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present.

[For text of subs 3 to 6, see M.S.1998]

History: 1999 c 85 art 2 s 75,96

322B.663 STANDARD OF CONDUCT.

[For text of subs 1 to 3, see M.S.1998]

Subd. 4. **Elimination or limitation of liability.** A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty

as a governor may be eliminated or limited in the articles of organization or a member control agreement. Neither the articles nor a member control agreement may eliminate or limit the liability of a governor:

- (1) for any breach of the governor's duty of loyalty to the limited liability company or its members;
 - (2) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
 - (3) under section 80A.23 or 322B.56;
 - (4) for any transaction from which the governor derived an improper personal benefit;
- or
- (5) for any act or omission occurring before the date when the provision in the articles of organization or a member control agreement eliminating or limiting liability becomes effective.

[For text of subd 5, see M.S.1998]

History: 1999 c 85 art 2 s 76

322B.666 GOVERNOR CONFLICTS OF INTEREST.

Subdivision 1. **Conflict and procedure when conflict arises.** A contract or other transaction between a limited liability company and one or more of its governors, or between a limited liability company and an organization in or of which one or more of its governors are governors, directors, managers, officers, or legal representatives or have a material financial interest, is not void or voidable because the governor or governors or the other organizations are parties or because the governor or governors are present at the meeting of the members or the board of governors or a committee at which the contract or transaction is authorized, approved, or ratified, if:

- (1) the contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;
- (2) the material facts as to the contract or transaction and as to the governor's or governors' interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by (i) the owners of two-thirds of the voting power of the membership interests entitled to vote that are owned by persons other than the interested governor or governors, or (ii) the unanimous affirmative vote of all members, whether or not entitled to vote;
- (3) the material facts as to the contract or transaction and as to the governor's or governors' interest are fully disclosed or known to the board of governors or a committee, and the board of governors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board of governors or committee, but the interested governor or governors are not counted in determining the presence of a quorum and must not vote; or
- (4) the contract or transaction is a distribution described in section 322B.54, subdivision 1, or a merger or exchange described in section 322B.70, subdivision 1 or 2.

[For text of subd 2, see M.S.1998]

History: 1999 c 85 art 2 s 77

322B.673 DUTIES OF REQUIRED MANAGERS.

Subdivision 1. **Presumption and modification.** Unless the articles of organization, a member control agreement, or the bylaws provide otherwise, the chief manager and treasurer have the duties specified in this section.

Subd. 2. **Chief manager.** The chief manager shall:

- (1) have general active management of the business of the limited liability company;
- (2) when present, preside at all meetings of the board of governors and of the members;

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

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

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

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

[For text of subd 3, see M.S.1998]

History: 1999 c 85 art 2 s 78,79,96

322B.676 OTHER MANAGERS.

The board of governors may elect or appoint, in a manner set forth in the articles of organization, a member control agreement, or bylaws or in a resolution approved by the affirmative vote of a majority of the governors present, any other managers or agents the board of governors considers necessary for the operation and management of the limited liability company. Each of these managers and agents has the powers, rights, duties, responsibilities, and terms in office provided for in the articles, a member control agreement, or bylaws or determined by the board of governors.

History: 1999 c 85 art 2 s 80,96

322B.686 RESIGNATION, REMOVAL AND VACANCY.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. **Vacancy.** A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief manager or treasurer must, be filled for the unexpired portion of the term in the manner provided in the articles, a member control agreement, or bylaws, or determined by the board of governors, or pursuant to section 322B.68.

History: 1999 c 85 art 2 s 81,96

322B.689 DELEGATION.

Unless prohibited by the articles, a member control agreement, or bylaws or by a resolution approved by the affirmative vote of a majority of the governors present, a manager elected or appointed by the board of governors may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

History: 1999 c 85 art 2 s 82,96

322B.699 INDEMNIFICATION.

[For text of subs 1 to 3, see M.S.1998]

Subd. 4. **Prohibition or limit on indemnification or advances.** The articles of organization, a member control agreement, or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subdivisions 2 and 3 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person

occurring before the effective date of a provision in the articles of organization, a member control agreement, or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

[For text of subds 5 to 9, see M.S.1998]

History: 1999 c 85 art 2 s 83,96

322B.72 PLAN APPROVAL.

Subdivision 1. **Governing board approval and notice to owners.** A resolution containing the plan of merger or exchange must be approved by the affirmative vote of a majority of the board members present at a meeting of the governing board of each constituent organization and must then be submitted at a regular or a special meeting to the owners of:

(1) each constituent organization, in the case of a plan of merger; and

(2) the organization whose ownership interests will be acquired by the acquiring organization in the exchange, in the case of a plan of exchange.

The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners owning any class or series of ownership interest of an organization are entitled to vote on the plan of merger or exchange pursuant to this section, written notice must be given to every owner of that organization, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 302A.435 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 322B.34 for notice of meetings of members in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

Subd. 2. **Approval by owners.** (a) At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote. Except as provided in paragraph (b) or a member control agreement, a class or series of ownership interests of the organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

(b) A class or series of ownership interests of the organization is not entitled to vote as a class or series solely because the plan of merger effects a cancellation of the ownership interests of the class or series if the plan of merger effects a cancellation of all ownership interests of the organization of all classes and series that are existing immediately before the merger and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their shares under section 322B.383 in the event of the merger.

[For text of subd 3, see M.S.1998]

History: 1999 c 85 art 2 s 84,85

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, if any, fixed in the articles of organization for the duration of the limited liability company expires, or if the limited liability company's term expires pursuant to section 322B.20, subdivision 2, paragraph (a);

(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;

(5)(i) for limited liability companies whose existence begins before August 1, 1999, except as otherwise provided in the articles of organization or a member control agreement,

upon the occurrence of an 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) there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of all the remaining members obtained no later than 90 days after the termination of the continued membership, or (B) if the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member;

(ii) for limited liability companies whose existence begins on or after August 1, 1999, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, but only if: (A) the articles of organization or a member control agreement specifically provide that the termination causes dissolution and in that event only as provided in the articles or member control agreement; or (B) if the membership of the last or sole member terminates and the legal representative of that last or sole member does not cause the limited liability company to admit at least one member within 180 days after the termination;

- (6) a merger in which the limited liability company is not the surviving organization; or
- (7) when terminated by the secretary of state according to section 322B.960.

[For text of subd 2, see M.S.1998]

Subd. 3. Security interests. Notwithstanding any provision of law, articles of organization, member control agreement, bylaws, 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: 1999 c 85 art 2 s 86,96

322B.813 PROCEDURE IN WINDING UP.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. Collection and payment. When a notice of dissolution has been filed with the secretary of state, the board of governors, or the managers acting under the direction of the board of governors, shall proceed as soon as possible:

- (1) to give notice to creditors and claimants under section 322B.816 or to proceed under section 322B.82;
- (2) to collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and
- (3) except as provided in sections 322B.816, 322B.82, and 322B.863, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 322B.873.

[For text of subs 4 and 5, see M.S.1998]

History: 1999 c 85 art 2 s 87

322B.816 WINDING UP PROCEDURE FOR LIMITED LIABILITY COMPANIES THAT GIVE NOTICE TO CREDITORS AND CLAIMANTS.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. [Repealed, 1999 c 85 art 2 s 95]

Subd. 4. Claims against limited liability companies that give notice. (a) A limited liability company that gives notice to creditors and claimants has 30 days from the receipt of each claim filed according to the procedures set forth by the limited liability company on or

before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is considered accepted.

(b) A creditor or claimant to whom notice is given and whose claim is rejected by the limited liability company has 60 days from the date of rejection, 180 days from the date the limited liability company filed with the secretary of state the notice of dissolution, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.

(c) A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the limited liability company on or before the date set forth in the notice is barred from suing the dissolved limited liability company on that claim or otherwise realizing upon or enforcing it against the dissolved limited liability company, except as provided in section 322B.863.

(d) A creditor or claimant whose claim is rejected by the limited liability company under paragraph (b) is barred from suing on that claim or otherwise realizing upon or enforcing it whether against the dissolved limited liability company or any successor organization, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in paragraph (b).

[For text of subs 5 and 6, see M.S.1998]

History: 1999 c 85 art 2 s 88

322B.833 JUDICIAL INTERVENTION AND EQUITABLE REMEDIES, DISSOLUTION, AND TERMINATION.

[For text of subd 1, see M.S.1998]

Subd. 2. **Buy-out on motion.** In an action under subdivision 1, clause (2), in which one or more of the circumstances described in that clause is established, the court may, upon motion of a limited liability company or a member, order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to either the limited liability company or the moving members, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

The purchase price of any membership interest so sold must be the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization or a member control agreement states a price for the redemption or buy-out of membership interests, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

Within five days after the entry of the order, the limited liability company shall provide each selling member with the information it is required to provide under section 322B.386, subdivision 5, paragraph (a).

If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall determine the fair value of the membership interests under the provisions of section 322B.386, subdivision 7, may allow interest or costs as provided in section 322B.386, subdivisions 1 and 8, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.

The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of a membership interest under this subdivision and provided that the limited liability company or the moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member shall no longer have any rights or

status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded.

[For text of subds 3 and 4, see M.S.1998]

Subd. 5. Considerations as to dissolution. In determining what relief to order, the court shall take into account that relief that results in the termination of a member's membership interest may cause dissolution of the limited liability company. If the court orders relief that results in dissolution of the limited liability company, the court shall make appropriate orders providing for the winding up and termination of the dissolved limited liability company.

Subd. 6. Liquidation remedy. In deciding whether to order winding up through liquidation, the court shall consider whether lesser relief suggested by one or more parties, or provided in a member control agreement, such as any form of equitable relief, or a buy-out or partial liquidation coupled with the continuation of the business of the dissolved limited liability company through a successor organization, would be adequate to permanently relieve the circumstances established under subdivision 1, clause (2) or (3). Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

[For text of subds 7 and 8, see M.S.1998]

History: 1999 c 85 art 2 s 89-91

322B.843 ACTION BY ATTORNEY GENERAL.

[For text of subd 1, see M.S.1998]

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

History: 1999 c 85 art 2 s 92,96

322B.873 DISPOSITION OF ASSETS UPON DISSOLUTION.

Subdivision 1. Disposition upon liquidation. Subject to subdivision 4, except 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 satisfy 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 or a member control agreement, 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 or a member control agreement, 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. [Repealed, 1999 c 85 art 2 s 95]

Subd. 3. [Repealed, 1999 c 85 art 2 s 95]

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 li-

ability 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, if any, to dissenters due to winding up merger under section 322B.81, subdivision 3, is subject to offset these damages.

History: 1999 c 85 art 2 s 93,94