

**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.

Subd. 2. **Determination presumed proper.** A determination that the limited liability company will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 322B.663 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 322B.663 or 322B.56 will accrue if the requirements of this subdivision have been met.

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

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

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

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

Subd. 4. **Restrictions.** (a) A distribution may be made to the owners of a class or series of membership interests only if:

(1) all amounts payable to the owners of membership interests having a preference for the payment of that kind of distribution, other than those owners who give notice to the limited liability company of their agreement to waive their rights to that payment, are paid; and

(2) the payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of liquidation to the owners of membership interests having preferential rights, unless the distribution is made to those members in the order and to the extent of their respective priorities or the owners of membership interests who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

A determination that the payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of termination to the owners of membership interests having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 322B.663 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. Liability under section 322B.663 or 322B.56 will not arise if the requirements of this paragraph are met.

(b) If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes unless those owners who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

**History:** 1992 c 517 art 2 s 60; 1993 c 137 s 40; 1996 c 361 s 33; 1999 c 85 art 2 s 55,96