

**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.

Subd. 2. **Definition.** A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the limited liability company may accept new contributions from other persons or to make contribution allowance agreements with other persons.

Subd. 3. **When right accrues.** A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.

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.

Subd. 5. **Extent of preemptive right.** The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.

Subd. 6. **Waiver.** A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.

Subd. 7. **Notice.** When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board of governors shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:

- (1) the extent of the member's preemptive right, being:

(i) in the case of a preemptive right to make a contribution, the amount of the contribution to be made, and

(ii) in the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;

(2) the method used to determine the extent of the member's preemptive right;

(3) the terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and

(4) the time within which and the method by which the member must exercise the right.

Subd. 8. **Contribution and participation by others.** If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board of governors for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board of governors may accept contributions or make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.

Subd. 9. **Modification.** If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization that has the effect of denying, limiting, or modifying the preemptive rights provided in this section shall 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.

Subd. 10. **Contractual rights.** A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a limited liability company to grant first refusal rights, contribution allowance rights, or other rights to make contributions to the limited liability company to members, persons who have entered into contribution agreements, or other persons before accepting contributions or making contribution allowance agreements with any other person.

**History:** 1992 c 517 art 2 s 34; 1996 c 361 s 17,18; 1997 c 10 art 4 s 10; 1999 c 85 art 2 s 19,20