322C.0110 OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.

Subdivision 1. **Operating agreement.** Except as otherwise provided in subdivisions 2 and 3, the operating agreement governs:

(1) relations among the members as members and between the members and the limited liability company;

(2) the rights and duties under this chapter of a person in the capacity of manager or governor;

(3) the activities of the company and the conduct of those activities; and

(4) the means and conditions for amending the operating agreement.

Subd. 2. **Default rules supplementing operating agreement.** To the extent the operating agreement does not otherwise provide for a matter described in subdivision 1, this chapter governs the matter.

Subd. 3. **Restrictions.** An operating agreement may not:

(1) vary a limited liability company's capacity under section 322C.0105 to sue and be sued in its own name;

(2) vary the law applicable under section 322C.0106;

(3) vary the power of the court under section 322C.0204;

(4) subject to subdivisions 4 to 7, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;

(5) subject to subdivisions 4 to 7, eliminate the contractual obligation of good faith and fair dealing under section 322C.0409, subdivision 4;

(6) unreasonably restrict the duties and rights stated in section 322C.0410;

(7) vary the power of a court to decree dissolution in the circumstances specified in section 322C.0701, subdivision 1, clauses (4) and (5);

(8) vary the requirement to wind up a limited liability company's business as specified in section 322C.0702, subdivisions 1 and 2, clause (1);

(9) unreasonably restrict the right of a member to maintain an action under sections 322C.0901 to 322C.0906;

(10) restrict the right to approve a merger, conversion, or domestication under section 322C.1015 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

(11) except as otherwise provided in section 322C.0112, subdivision 2, restrict the rights under this chapter of a person other than a member, manager, or governor.

Subd. 4. **Provisions particularly but not exclusively authorized.** If not manifestly unreasonable, and without limiting the terms that may be included in an operating agreement, the operating agreement may:

(1) restrict or eliminate the duty:

(i) as required in section 322C.0409, subdivisions 2, clause (1), 7, and 8, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct

or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(ii) as required in section 322C.0409, subdivisions 2, clause (2), 7, and 8, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(iii) as required by section 322C.0409, subdivisions 2, clause (3), 7, and 8, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(2) identify specific types or categories of activities that do not violate the duty of loyalty;

(3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and

(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under section 322C.0409, subdivision 4.

Subd. 5. **Duty of loyalty, authorization and ratification of otherwise violative conduct.** The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

Subd. 6. **Eliminating fiduciary duty when responsibility eliminated.** To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

Subd. 7. **Indemnification and exculpation.** The operating agreement may alter or eliminate the indemnification for a member, manager, or governor provided by section 322C.0408, subdivision 2, and may eliminate or limit a member's, manager's, or governor's liability to the limited liability company and members for money damages, except for:

(1) breach of the duty of loyalty;

(2) a financial benefit received by the member or manager to which the member or manager is not entitled;

(3) a breach of a duty under section 322C.0406;

(4) intentional infliction of harm on the company or a member; or

(5) an intentional violation of criminal law.

Subd. 8. **Determining whether term is manifestly unreasonable.** The court shall decide any claim under subdivision 4 that a term of an operating agreement is manifestly unreasonable. The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

(i) the objective of the term is unreasonable; or

(ii) the term is an unreasonable means to achieve the provision's objective.

History: *2014 c 157 art 1 s 10; 2015 c 39 s 28,29*