CHAPTER 322C

MINNESOTA REVISED UNIFORM LIMITED LIABILITY COMPANY

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GENERAL PROVISIONS

322C.0101 CITATION.

This chapter may be cited as the "Minnesota Revised Uniform Limited Liability Company Act."

History: *2014 c 157 art 1 s 1*

322C.0102 DEFINITIONS.

Subdivision 1. **Application.** For purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Articles of organization.** "Articles of organization" means the articles of organization required by section 322C.0201. The term includes the articles of organization as amended or restated.

Subd. 3. **Board.** "Board" means the board of governors, however designated, of a board-managed limited liability company.

Subd. 4. **Board-managed limited liability company.** "Board-managed limited liability company" means a limited liability company that qualifies as such under section 322C.0407, subdivision 1.

Subd. 5. **Contribution.** "Contribution" means any benefit provided by a person to a limited liability company:

(1) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(2) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(3) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

Subd. 6. **Debtor in bankruptcy.** "Debtor in bankruptcy" means a person that is the subject of:

(1) an order for relief under United States Code, title 11, or a successor statute of general application; or

(2) a comparable order under federal, state, or foreign law governing insolvency.

Subd. 7. **Distribution.** "Distribution," except as otherwise provided in section 322C.0405, subdivision 7, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

Subd. 8. **Effective.** "Effective," with respect to a record required or permitted to be filed with the secretary of state under this chapter, means effective under section 322C.0205, subdivision 3.

Subd. 9. **Filed.** "Filed" or "filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed and accompanied by any required filing fees, has been delivered to the secretary of state. The secretary of state shall endorse on the original or an image thereof the word "Filed" and the month, day, and year of filing, record the document or an image thereof in the Office of the Secretary of State, and return a document or the image thereof to the person who delivered it for filing.

Subd. 10. **Foreign limited liability company.** "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

Subd. 11. **Governor.** "Governor" means a member of the board, however designated, of a board-managed limited liability company.

Subd. 12. **Limited liability company.** "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed under this chapter.

Subd. 13. **Manager.** "Manager" means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in section 322C.0407, subdivision 3.

Subd. 14. **Manager-managed limited liability company.** "Manager-managed limited liability company" means a limited liability company that qualifies as such under section 322C.0407, subdivision 1.

Subd. 15. **Member.** "Member" means a person that has become a member of a limited liability company under section 322C.0401 and has not dissociated under section 322C.0602.

Subd. 16. **Member-managed limited liability company.** "Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company or a board-managed limited liability company.

Subd. 17. **Operating agreement.** "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all

the members of a limited liability company, including a sole member, concerning the matters described in section 322C.0110, subdivision 1. The term includes the agreement as amended or restated.

Subd. 18. **Oppressive.** (a) "Oppressive," with respect to an application brought by a member under section 322C.0701, subdivision 1, clause (5), item (ii), means conduct:

(1) engaged in by one or more:

(i) members in a member-managed limited liability company or who are otherwise in control of any limited liability company;

(ii) managers in a manager-managed limited liability company; or

(iii) governors of a board-managed limited liability company;

(2) that occurs with respect to the applicant member's capacity as:

(i) a member, manager, or governor of a limited liability company; or

(ii) an employee of a limited liability company with 35 or fewer members; and

(3) that is unfairly prejudicial to the applicant member in a capacity listed in clause (2), because the conduct frustrated an expectation of the applicant member that:

(i) is reasonable in light of the reasonable expectations of the other members;

(ii) was material to the applicant's decision to become a member of the limited liability company or for a substantial time has been material during the member's continuing membership;

(iii) was known to other members or that the other members had reason to know; and

(iv) is not contrary to the operating agreement as applied consistently with the contractual obligation of good faith and fair dealing under section 322C.0409, subdivision 4.

(b) For the purposes of paragraph (a), conduct:

(1) includes words, action, inaction, and any combination of words, action, or inaction; and

(2) is not oppressive solely by reason of a good faith disagreement as to the content, interpretation, or application of the company's operating agreement.

Subd. 19. **Organizer.** "Organizer" means a person that acts under section 322C.0201 to form a limited liability company.

Subd. 20. **Person.** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

Subd. 21. **Principal place of business.** "Principal place of business" means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

Subd. 22. **Record.** "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 23. **Recorded in the real property records.** "Recorded in the real property records" means that a certified copy of a statement meeting the applicable requirements of this chapter, including containing a legal description of the property affected by the statement, as filed with the secretary of state, has been recorded in the Office of the County Recorder in the county in which the real property affected by the statement is located or, if the real property is registered under chapter 508 or 508A, has been recorded in the office of the applicable registrar of titles and memorialized on the certificate of title for that property.

Subd. 24. **Registered office.** "Registered office" means:

(1) the office that a limited liability company is required to designate and maintain under section 322C.0113; or

(2) the office that a foreign limited liability company is required to designate and maintain under sections 5.36 and 322C.0802.

Subd. 25. **Sign.** "Sign" means, with the present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic symbol, sound, or process.

Subd. 26. **State.** "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Subd. 27. **Transfer.** "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

Subd. 28. **Transferable interest.** "Transferable interest" means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

Subd. 29. **Transferee.** "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

History: *2014 c 157 art 1 s 2; 2015 c 21 art 1 s 70*

322C.0103 KNOWLEDGE; NOTICE.

Subdivision 1. **Knowledge of facts.** A person knows a fact when the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under subdivision 4, clause (1), or law other than this chapter.

Subd. 2. **Notice of facts.** A person has notice of a fact when the person:

(1) has reason to know the fact from all of the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under subdivision 4, clause (2).

Subd. 3. **Notification of facts.** A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

Subd. 4. **Constructive notice.** A person that is not a member is deemed:

(1) to know of a limitation on authority to transfer real property as provided in section 322C.0302, subdivision 7; and

(2) to have notice of a limited liability company's:

(i) dissolution, 90 days after a statement of dissolution under section 322C.0702, subdivision 2, clause (2)(i), becomes effective;

(ii) termination, 90 days after a statement of termination under section 322C.0702, subdivision 2, clause (2)(vi), becomes effective; and

(iii) merger, conversion, or domestication, 90 days after articles of merger, conversion, or domestication under sections 322C.1001 to 322C.1015 become effective.

History: *2014 c 157 art 1 s 3*

322C.0104 NATURE, PURPOSE, AND DURATION OF LIMITED LIABILITY COMPANY.

Subdivision 1. **Separate entity.** A limited liability company is an entity distinct from its members.

Subd. 2. **Permitted purposes.** Except for a nonprofit limited liability company subject to section 322C.1101, which must comply with that section, a limited liability company may have any lawful purpose.

Subd. 3. **Duration.** A limited liability company has perpetual duration.

History: *2014 c 157 art 1 s 4*

322C.0105 POWERS.

Subdivision 1. **Powers generally.** Except as provided in subdivision 2, a limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities.

Subd. 1a. **Loans, guarantees, and suretyship.** Without in any way limiting the generality of the power of a limited liability company to do all things necessary or convenient to carry on its activities as conferred in subdivision 1, a limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved pursuant to this chapter and the company's operating agreement and:

(1) is in the usual and regular course of business of the limited liability company;

(2) is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a business relationship, or an organization to which the limited liability company has the power to make donations, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;

(3) is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or

(4) whether or not any separate consideration has been paid or promised to the limited liability company, has been approved by (i) the owners of two-thirds of the voting power of persons other than the interested person or persons, or (ii) the unanimous affirmative vote of all members, whether or not ordinarily entitled to vote.

Any such loan, guarantee, suretyship, or other financial assistance may be with or without interest and may be unsecured or may be secured in any manner including, without limitation, a grant of a security interest in a member's transferable interest in the limited liability company. This subdivision does not grant any authority to act as a bank or to carry on the business of banking.

Subd. 2. **Shelf LLC.** Until a limited liability company has or has had at least one member, the company lacks the capacity to do any act or carry on any activity except:

(1) delivering to the secretary of state for filing a statement of change under section 322C.0114, an amendment to the articles of organization under section 322C.0202, a statement of correction under section 322C.0206, an annual report under section 322C.0208, and a statement of termination under section 322C.0702;

(2) admitting a member under section 322C.0401; and

(3) dissolving under section 322C.0701.

Subd. 3. **Ratification.** A limited liability company that has or has had at least one member may ratify an act or activity that occurred when the company lacked capacity under subdivision 2.

History: *2014 c 157 art 1 s 5; 2015 c 39 s 26,27; 2016 c 135 art 4 s 15*

322C.0106 GOVERNING LAW.

The law of this state governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member, a manager as manager, and a governor as governor, for the debts, obligations, or other liabilities of a limited liability company.

History: *2014 c 157 art 1 s 6*

322C.0107 SUPPLEMENTAL PRINCIPLES OF LAW.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

History: *2014 c 157 art 1 s 7*

322C.0108 LIMITED LIABILITY COMPANY NAME.

Subdivision 1. **Requirements and prohibitions.** The limited liability company name must:

(1) be in the English language or in any other language expressed in English letters or characters;

(2) contain the words "limited liability company," or must contain the abbreviation "LLC" or, in the case of a limited liability company that is a professional firm subject to chapter 319B, must meet the requirements of section 319B.05 applicable to a limited liability company;

(3) not contain the word "corporation" or "incorporated" and must not contain the abbreviation of either or both of these words;

(4) not contain a word or phrase that indicates or implies that it is organized for a purpose other than a permitted purpose; and

(5) be distinguishable upon the records in the Office of the Secretary of State from the name of each domestic limited liability company, limited liability partnership, corporation, and limited partnership, whether profit or nonprofit, and each foreign limited liability company, limited liability partnership, corporation, and limited partnership on file, authorized or registered to do business in this state at the time of filing, whether profit or nonprofit, and each name the right to which is, at the time of organization, reserved as provided for in sections 5.35, 302A.117, 317A.117, 321.0109, 322C.0109, or 333.001 to 333.54, unless there is filed with the articles of organization one of the following:

(i) the written consent of the domestic limited liability company, limited liability partnership, corporation, or limited partnership or the foreign limited liability company, limited liability partnership, corporation, or limited partnership authorized or registered to do business in this state or the holder of a reserved name or a name filed by or registered with the secretary of state under sections 333.001 to 333.54 having a name that is not distinguishable;

(ii) a certified copy of a final decree of a court in this state establishing the prior right of the applicant to the use of the name in this state; or

(iii) the applicant's affidavit that the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership with the name that is not distinguishable has been organized, incorporated, or on file in this state for at least three years prior to the affidavit, if it is a domestic limited liability company, corporation, or limited partnership, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign limited liability company, corporation, or limited partnership, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit, that the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the domestic or foreign limited liability company or domestic or foreign corporation or in care of the agent of the domestic or foreign limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, stating that the applicant intends to use a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee of the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership with the name that is not distinguishable in the county in which is located the registered office of the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the domestic or foreign limited liability company,

domestic or foreign corporation, or domestic or foreign limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

Subd. 2. **Determination.** The secretary of state shall determine whether a name is "distinguishable" from another name for purposes of this section and section 322C.0109.

Subd. 3. **Other laws affecting use of names.** This section and section 322C.0109 do not abrogate or limit the law of unfair competition or unfair practices, or sections 333.001 to 333.54, or the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, or derogate the common law or the principles of equity.

Subd. 4. **Use of name by surviving or successor organization.** A limited liability company that is the surviving organization in a merger with one or more other organizations, or that is the continuation of an organization following a conversion, or that is organized by the reorganization of one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may have the same name as that used in this state by any of the other organizations, if the other organization whose name is sought to be used was organized under the laws of, or is authorized to transact business in, this state.

Subd. 5. **Injunction.** The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence, but a court in this state may, upon application of the state or of a person interested or affected, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and articles of organization issued.

History: *2014 c 157 art 1 s 8,29*

322C.0109 RESERVED NAME.

Subdivision 1. **Procedure.** A person may reserve the exclusive use of the name of a limited liability company, including an alternate name for a foreign limited liability company, by filing an application with the secretary of state. The application must state the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a one-year period.

Subd. 2. **Transfer.** The owner of a name reserved for a limited liability company may transfer the reservation to another person by filing with the secretary of state for filing a signed notice of the transfer which states the name and address of the transferee.

History: *2014 c 157 art 1 s 9*

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*

322C.0111 OPERATING AGREEMENT; EFFECT ON LIMITED LIABILITY COMPANY AND PERSONS BECOMING MEMBERS; PREFORMATION AGREEMENT.

Subdivision 1. **Company's assent not required.** A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

Subd. 2. **Deemed assent by all members.** A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

Subd. 3. **Preformation agreement.** Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

History: *2014 c 157 art 1 s 11*

322C.0112 OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.

Subdivision 1. **Approval of third party.** An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

Subd. 2. **Transferees and dissociated members.** The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under section 322C.0503, subdivision 2, clause (2), to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

Subd. 3. **Ineffective provisions.** If a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter contains a provision that would be ineffective under section 322C.0110, subdivision 3, if contained in the operating agreement, the provision is likewise ineffective in the record.

Subd. 4. **Conflicting provisions.** Subject to subdivision 3, if a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter conflicts with a provision of the operating agreement:

(1) the operating agreement prevails as to members, dissociated members, transferees, managers, and governors; and

(2) the record prevails as to other persons to the extent they reasonably rely on the record.

History: *2014 c 157 art 1 s 12*

322C.0113 OFFICE AND AGENT FOR SERVICE OF PROCESS.

Every limited liability company shall have a registered office and may have a registered agent, in the manner prescribed by section 5.36.

History: *2014 c 157 art 1 s 13*

322C.0114 CHANGE OF REGISTERED OFFICE OR AGENT FOR SERVICE OF PROCESS.

Every limited liability company may change its registered office or change its registered agent, and the agent may resign or change its business address or name, in the manner prescribed by section 5.36.

History: *2014 c 157 art 1 s 14*

322C.0115 RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

Every limited liability company registered agent may resign in the manner prescribed by section 5.36.

History: *2014 c 157 art 1 s 15*

322C.0116 SERVICE OF PROCESS ON LIMITED LIABILITY COMPANY.

Subdivision 1. **Agent.** An agent for service of process appointed by a limited liability company or foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served on the company.

Subd. 2. **Secretary of state.** If a limited liability company or foreign limited liability company does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's street address, the secretary of state is an agent of the company upon whom process, notice, or demand may be served.

Subd. 3. **Record of service.** A process, notice, or demand required or permitted by law to be served upon a company may be served upon the secretary of state as provided in section 5.25.

Subd. 4. **Other law not affected.** This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

History: *2014 c 157 art 1 s 16*

322C.0117 LEGAL RECOGNITION OF ELECTRONIC RECORDS AND SIGNATURES.

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

(b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(d) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Subd. 2. **Electronic records and signatures.** For purposes of this chapter:

(1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

(2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

(3) if a provision requires a record to be in writing, an electronic record satisfies the requirement; and

(4) if a provision requires a signature, an electronic signature satisfies the requirement.

History: *2014 c 157 art 1 s 17*

322C.0201 FORMATION OF LIMITED LIABILITY COMPANY; ARTICLES OF ORGANIZATION.

Subdivision 1. **Organizers.** One or more persons may act as organizers to form a limited liability company by signing and filing with the secretary of state articles of organization.

Subd. 2. **Required contents of articles of organization.** Articles of organization must state:

(1) the name of the limited liability company, which must comply with section 322C.0108;

(2) the street address of the initial registered office and, if the limited liability company has an agent for the service of process, the name of the agent for service of process of the company at the registered office; and

(3) the name and street address of each organizer.

Subd. 3. **Optional contents of articles of organization.** Subject to section 322C.0112, subdivision 3, articles of organization may also contain statements as to matters other than those required by subdivision 2. However, a statement in articles of organization is not effective as a statement of authority.

Subd. 4. **Formation.** (a) A limited liability company is formed when articles of organization have been filed with the secretary of state accompanied by a payment of $135.

(b) Except in a proceeding by this state to dissolve a limited liability company, the filing of the articles of organization by the secretary of state is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

(c) The formation of a limited liability company does not by itself cause any person to become a member. However, this chapter does not preclude an agreement, made before or after formation of a limited liability company, which provides that one or more persons will become members, or acknowledging that one or more persons became members, upon or otherwise in connection with the formation of the limited liability company.

History: *2014 c 157 art 1 s 18; 2015 c 39 s 30; 2016 c 135 art 4 s 16*

322C.0202 AMENDMENT OR RESTATEMENT OF ARTICLES OF ORGANIZATION.

Subdivision 1. **Timing of amendment.** Articles of organization may be amended or restated at any time.

Subd. 2. **Amendment procedure.** To amend its articles of organization, a limited liability company must file with the secretary of state an amendment stating:

(1) the name of the company;

(2) the changes the amendment makes to the articles of organization as most recently amended or restated; and

(3) a statement that the amendment was adopted pursuant to this chapter.

Subd. 3. **Restatement.** To restate its articles of organization, a limited liability company must file with the secretary of state a restatement, designated as such in its heading, stating:

(1) in the heading or an introductory paragraph, the company's present name; and

(2) the changes the restatement makes to the articles of organization as most recently amended or restated.

Subd. 4. **Date of effectuation.** Subject to sections 322C.0112, subdivision 3, and 322C.0205, subdivision 3, an amendment to or restatement of articles of organization is effective when filed with the secretary of state.

Subd. 5. **Inaccurate information.** If a member of a member-managed limited liability company, a manager of a manager-managed limited liability company, or a governor of a board-managed limited liability company, knows that any information in articles of organization filed with the secretary of state was inaccurate when the articles were filed or has become inaccurate owing to changed circumstances, the member, manager, or governor shall promptly:

(1) cause the articles to be amended; or

(2) if appropriate, file with the secretary of state a change of registered office under section 322C.0114.

History: *2014 c 157 art 1 s 19*

322C.0203 SIGNING OF RECORDS TO BE FILED WITH SECRETARY OF STATE.

Subdivision 1. **Signing requirements.** A record filed with the secretary of state pursuant to this chapter must be signed as follows:

(1) Except as otherwise provided in clauses (2) through (5), a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

(2) A limited liability company's initial articles of organization must be signed by at least one person acting as an organizer.

(3) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under section 322C.0702, subdivision 3, or a person appointed under section 322C.0702, subdivision 4, to wind up those activities.

(4) A statement of denial by a person under section 322C.0303 must be signed by that person.

(5) Any other record must be signed by the person on whose behalf the record is filed with the secretary of state.

Subd. 2. **Signing by agent.** Any record filed under this chapter may be signed by an agent pursuant to section 5.15.

History: *2014 c 157 art 1 s 20; 2015 c 39 s 31*

322C.0204 SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

Subdivision 1. **Process.** If a person required by this chapter to sign a record or file a record with the secretary of state does not do so, any other person that is aggrieved may petition the appropriate court to order:

(1) the person to sign the record;

(2) the person to file the record with the secretary of state for filing; or

(3) the secretary of state to file the record unsigned.

Subd. 2. **Joinder of limited liability company.** If a petitioner under subdivision 1 is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

History: *2014 c 157 art 1 s 21*

322C.0205 FILING OF RECORDS WITH SECRETARY OF STATE; EFFECTIVE TIME AND DATE.

Subdivision 1. **Delivery requirements.** A record authorized or required to be filed with the secretary of state under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the filing fee of $35 or any filing fee specified in this chapter for the filing has been paid, unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, the secretary of state shall file the record and:

(1) for a statement of denial under section 322C.0303, send an image of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(2) for all other records, send an image of the filed record to the person on whose behalf the record was filed.

Subd. 2. **Certified copy to requester.** Upon request and payment of the requisite fee, the secretary of state shall send to the requester a certified copy of a requested record.

Subd. 3. **Effective date and time.** Except as otherwise provided in sections 322C.0115, 322C.0201, subdivision 4, paragraph (a), and 322C.0206, a record filed with the secretary of state under this chapter may specify an effective time and a delayed effective date. Subject to sections 322C.0115, 322C.0201, subdivision 4, paragraph (a), and 322C.0206, a record filed with the secretary of state is effective:

(1) if the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at 11:59 p.m. on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed; or

(4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed.

History: *2014 c 157 art 1 s 22; 2016 c 135 art 4 s 17*

322C.0206 LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.

Subdivision 1. **Persons liable.** If a record filed with the secretary of state under this chapter contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) subject to subdivision 2, a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(i) the record was filed with the secretary of state on behalf of the company; and

(ii) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(A) effected an amendment under section 322C.0202;

(B) filed a petition under section 322C.0204; or

(C) filed with the secretary of state a statement under section 5.36, subdivision 3, or articles of correction under section 5.16.

Subd. 2. **Excepted members.** To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records filed with the secretary of state under this chapter and imposes that responsibility on one or more other members, the liability stated in subdivision 1, clause (2), applies to those other members and not to the member that the operating agreement relieves of the responsibility.

Subd. 3. **Penalty of perjury.** An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

History: *2014 c 157 art 1 s 23*

322C.0207 CERTIFICATE OF EXISTENCE OR AUTHORIZATION.

The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company pursuant to section 5.12.

History: *2014 c 157 art 1 s 24*

322C.0208 ANNUAL REPORT FOR SECRETARY OF STATE.

(a) The secretary of state may send annually to each limited liability company, using the information provided by the limited liability company and foreign limited liability company pursuant to section 5.002 or 5.34 or the articles of organization, a notice announcing the need to file the annual renewal and informing the limited liability company that the annual renewal may be filed online and that paper filings may also be made, and informing the limited liability company that failing to file the annual renewal will result in an administrative termination of the limited liability company or the revocation of the authority of the limited liability company and foreign limited liability company to do business in Minnesota.

(b) Each calendar year beginning in the calendar year following the calendar year in which a limited liability company and foreign limited liability company files articles of organization, a limited liability company and foreign limited liability company must file with the secretary of state by December 31 of each calendar year a renewal containing the items required by section 5.34. Notwithstanding section 322C.0205, subdivision 1, no fee is required to file an annual renewal.

History: *2014 c 157 art 1 s 25; 2016 c 135 art 4 s 18*

RELATIONS OF MEMBERS, MANAGERS, AND GOVERNORS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

322C.0301 NO AGENCY POWER OF MEMBER AS MEMBER.

Subdivision 1. **No automatic agency.** A member is not an agent of a limited liability company solely by reason of being a member.

Subd. 2. **Other law not affected.** A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

History: *2014 c 157 art 1 s 26*

322C.0302 STATEMENT OF AUTHORITY.

Subdivision 1. **Filing of statement with secretary of state; contents.** A limited liability company may file with the secretary of state a statement of authority. The statement:

(1) must include the name of the company and the street address of its registered office;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) execute an instrument transferring real property held in the name of the company; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(i) execute an instrument transferring real property held in the name of the company; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the company.

Subd. 2. **Amendment or cancellation of statement.** To amend or cancel a statement of authority filed with the secretary of state under section 322C.0205, subdivision 1, a limited liability company must file with the secretary of state an amendment or cancellation stating:

(1) the name of the company;

(2) the street address of the company's registered office;

(3) the caption of the statement being amended or canceled and the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement being affected is canceled.

Subd. 3. **Statements effective only as to nonmembers.** A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

Subd. 4. **Limitations of authority.** Subject to subdivision 3 and section 322C.0103, subdivision 4, and except as otherwise provided in subdivisions 6, 7, and 8, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

Subd. 5. **Authority to transfer property other than real property.** Subject to subdivision 3, a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under subdivision 2; or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

Subd. 6. **Authority to transfer real property.** Subject to subdivision 3, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company, whether or not a certified copy of the statement is recorded in the real property records, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the statement has been canceled or restrictively amended under subdivision 2 and a certified copy of the cancellation or restrictive amendment has been recorded in the real property records; or

(2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the real property records.

Subd. 7. **Recording; constructive notice regarding real property.** Subject to subdivision 3, if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the real property records, all persons are deemed to know of the limitation.

Subd. 8. **Statements of dissolution or termination.** Subject to subdivision 9, an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subdivision 6 and is a limitation on authority for the purposes of subdivision 7.

Subd. 9. **Postdissolution statements.** After a statement of dissolution becomes effective, a limited liability company may file with the secretary of state and, if appropriate, may record in the real property

records, a statement of authority that is designated as a postdissolution statement of authority. The statement operates as provided in subdivisions 6 and 7.

Subd. 10. **Statement of denial.** An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy in the real property records for the purposes of subdivision 6, clause (1).

History: *2014 c 157 art 1 s 27*

322C.0303 STATEMENT OF DENIAL.

A person named in a filed statement of authority granting that person authority may file with the secretary of state for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

History: *2014 c 157 art 1 s 28*

322C.0304 LIABILITY OF MEMBERS, MANAGERS, AND GOVERNORS.

Subdivision 1. **Liability shield for members, managers, and governors.** The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, or other liabilities of the company; and

(2) do not become the debts, obligations, or other liabilities of a member, manager, or governor solely by reason of the member acting as a member, manager acting as a manager, or governor acting as a governor.

Subd. 2. **Effect of lack of formalities.** The failure of a limited liability company to observe formalities relating exclusively to the management of its internal affairs is not a ground for imposing liability on the members, managers, or governors for the debts, obligations, or other liabilities of the company.

Subd. 3. **Piercing the veil.** Except as relates to the failure of a limited liability company to observe any formalities relating exclusively to the management of its internal affairs, the case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under Minnesota law also applies to limited liability companies.

History: *2014 c 157 art 1 s 29*

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

322C.0401 BECOMING A MEMBER.

Subdivision 1. **One initial member.** If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

Subd. 2. **Multiple initial members.** If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the

company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

Subd. 3. **Shelf limited liability company.** If a limited liability company is to have no members upon formation, a person becomes an initial member of the limited liability company with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the company's initial members.

Subd. 4. **Subsequent members.** After a limited liability company has or has had at least one member, a person becomes a member:

(1) as provided in the operating agreement;

(2) as the result of a transaction effective under sections 322C.1001 to 322C.1015;

(3) with the consent of all the members; or

(4) if, within 90 consecutive days after the company ceases to have any members:

(i) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and

(ii) the designated person consents to become a member.

Subd. 5. **Neither transferable interest nor contribution required.** A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

History: *2014 c 157 art 1 s 30*

322C.0402 FORM OF CONTRIBUTION.

A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

History: *2014 c 157 art 1 s 31*

322C.0403 LIABILITY FOR CONTRIBUTIONS.

Subdivision 1. **Impracticability no excuse.** A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

Subd. 2. **Creditor enforcement.** A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subdivision 1 may enforce the obligation.

History: *2014 c 157 art 1 s 32*

322C.0404 SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

Subdivision 1. **Equal distributions.** Subject to section 322C.1204, subdivision 3, clause (3), items (i) through (iv), any distributions made by a limited liability company before its dissolution and winding up

must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 322C.0502 and any charging order in effect under section 322C.0503.

Subd. 2. **Interim distributions.** A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

Subd. 3. **Form of distributions.** A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in section 322C.0707, subdivision 3, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

Subd. 4. **Parity with creditors.** If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

History: *2014 c 157 art 1 s 33; 2015 c 39 s 32*

322C.0405 LIMITATIONS ON DISTRIBUTION.

Subdivision 1. **Distribution restrictions.** A limited liability company may not make a distribution if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

Subd. 2. **Basis for decision.** A limited liability company may base a determination that a distribution is not prohibited under subdivision 1 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

Subd. 3. **Effect of distribution.** Except as otherwise provided in subdivision 6, the effect of a distribution under subdivision 1 is measured:

(1) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

(2) in all other cases, as of the date:

(i) the distribution is authorized, if the payment occurs within 120 days after that date; or

(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

Subd. 4. **Equivalent to unsecured creditors.** A limited liability company's indebtedness to a member incurred by reason of a distribution made according to this section is at parity with the company's indebtedness to its general, unsecured creditors.

Subd. 5. **Exclusion from calculated indebtedness.** A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subdivision 1 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

Subd. 6. **Indebtedness as distribution.** If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

Subd. 7. **Compensation not distribution.** In subdivision 1, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

History: *2014 c 157 art 1 s 34*

322C.0406 LIABILITY FOR IMPROPER DISTRIBUTIONS.

Subdivision 1. **Personal liability for decision makers.** Except as otherwise provided in subdivision 2, if a member of a member-managed limited liability company, manager of a manager-managed limited liability company, or governor of a board-managed limited liability company consents to a distribution made in violation of section 322C.0405 and in consenting to the distribution fails to comply with section 322C.0409, the member, manager, or governor is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 322C.0405.

Subd. 2. **Liability exception.** To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subdivision 1 applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

Subd. 3. **Liability of recipients.** A person that receives a distribution knowing that the distribution to that person was made in violation of section 322C.0405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 322C.0405.

Subd. 4. **Impleading.** A person against which an action is commenced because the person is liable under subdivision 1 may:

(1) implead any other person that is subject to liability under subdivision 1 and seek to compel pro rata contribution from the person in that action to the extent of the person's liability as provided in subdivision 1; and

(2) implead any person that received a distribution in violation of section 322C.0405 and seek to compel contribution from the person in the amount by which the distribution received by the person exceeded the amount that could have been properly paid under section 322C.0405.

Subd. 5. **Statute of limitations.** An action under this section is barred if not commenced within two years after the distribution.

History: *2014 c 157 art 1 s 35*

322C.0407 MANAGEMENT OF LIMITED LIABILITY COMPANY.

Subdivision 1. **Member-managed default.** Except as provided in section 322C.1101, subdivision 5, with respect to nonprofit limited liability companies, a limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(i) the company is or will be "manager-managed" or "board-managed";

(ii) the company is or will be "managed by managers" or "managed by a board"; or

(iii) management of the company is or will be "vested in managers" or "vested in a board"; or

(2) includes words of similar import.

Subd. 2. **Member-managed company rules.** In a member-managed limited liability company, the following rules apply:

(1) The management and conduct of the company are vested in the members.

(2) Each member has equal rights in the management and conduct of the company's activities.

(3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.

(4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

(5) The operating agreement may be amended only with the consent of all members.

Subd. 3. **Manager-managed company rules.** In a manager-managed limited liability company, the following rules apply:

(1) Except as otherwise expressly provided in this chapter, any matter relating to the activities of the company is decided exclusively by the managers.

(2) Each manager has equal rights in the management and conduct of the activities of the company.

(3) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.

(4) The consent of all members is required to:

(i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities;

(ii) approve a merger, conversion, or domestication under sections 322C.1001 to 322C.1015;

(iii) undertake any other act outside the ordinary course of the company's activities; and

(iv) amend the operating agreement.

(5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or

dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(7) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

Subd. 4. **Board-managed company rules.** In a board-managed limited liability company, the following rules apply:

(1) The activities and affairs of a limited liability company are to be managed by and under the direction of a board of governors, which shall consist of one or more governors as determined by members holding a majority of the voting power of the members. Except as specifically stated in this subdivision and section 322C.0202, subdivision 5, subject to section 322C.0302:

(i) the board acts only through an act of the board;

(ii) no individual governor has any right or power to act for the limited liability company; and

(iii) only officers, managers, or other agents designated by the board or through a process approved by the board have the right to act for the limited liability company, and that right extends only to the extent consistent with the terms of the designation.

(2) A governor must be a natural person. A person need not be a member to be a governor, but the dissociation of a member who is also a governor disqualifies the person as a governor. If a person who is both a governor and a member ceases to be a governor, that cessation does not by itself dissociate the person as a member. A person's ceasing to be a governor does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a governor.

(3) The method of election and any additional qualifications for governors will be as determined by members holding a majority of the voting power of the members. Governors are elected by a plurality of the voting power present and entitled to vote on the election of governors at a duly called or held meeting at which a quorum is present.

(4) A member may waive notice of a meeting for the election of governors. A member's waiver of notice under this clause is effective whether given before, at, or after the meeting, and whether given in a record, orally, or by attendance. Attendance by a member at a meeting for election of governors is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

(5) Once elected, a governor holds office for the term for which the governor was elected and until a successor is elected, or until the earlier death, resignation, disqualification, or removal of the governor. A governor may resign at any time. A governor may be removed at any time, without cause and without advance notice, by a majority of the voting power of all of the members. The existence of vacancies does not affect the power of the board to function if at least one governor remains in office.

(6) When a vacancy occurs, the limited liability company shall immediately notify all members in a record of the vacancy, stating the cause of the vacancy and the date the notice is sent. Within 30 days of that

date, the members may fill the vacancy in the same method the members may elect governors under clause (3). If the vacancy is not filled by the members under this clause, the vacancy may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum.

(7) The board shall meet from time to time as determined by members holding a majority of the voting power of the members, at a place decided by the board. If the day or date, time, and place of a board of governors meeting have been provided in a board resolution, 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. If notice is required for a meeting, notice shall be made in the manner stated in clause (8).

(8) A governor may call a board meeting by giving at least ten days' notice in a record to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting. As to each governor, the notice is effective when given.

(i) Notice may be:

(A) mailed to the governor at an address designated by the person or at the last known address of the person;

(B) deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the governor is not available, for delivery as promptly as practicable to the governor at an address designated by the governor or at the last known address of the governor;

(C) communicated to the governor orally;

(D) handed to the governor;

(E) given by facsimile communication, electronic mail, or any other form of electronic communication, if the governor has consented in a record to receive notice by such means; or

(F) by any other means determined by members holding a majority of the voting power of the members.

(ii) The notice is deemed given if by:

(A) mail, when deposited in the United States mail with sufficient postage affixed;

(B) deposit for delivery, when deposited for delivery as provided in item (i), subitem (B), with delivery charges prepaid or otherwise provided for by the sender;

(C) facsimile communication, when directed to a telephone number at which the governor has consented in a record to receive notice;

(D) electronic mail, when directed to an electronic mail address at which the governor has consented in a record to receive notice; and

(E) any other form of electronic communication by which the governor has consented in a record to receive notice, when directed to the governor.

(9) A governor may waive notice of a meeting of the board of governors. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in a record, orally, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except where the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

(10) A majority of the governors currently holding office is a quorum for the transaction of business. When a quorum is present at a duly called or held meeting of the board, the vote of a majority of the directors present constitutes an act of the board. 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.

(11) Any meeting among governors may be conducted solely by one or more means of remote communication through which all of the governors may participate with each other during the meeting, if the number of governors participating in the meeting would be sufficient to constitute a quorum. Participation in a meeting by that means constitutes presence in person at the meeting.

(12) A governor may participate in a board of governors meeting by means of remote communication, through which the governor, other governors so participating, and all governors physically present at the meeting may participate with each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

(13) An action required or permitted to be taken at a board meeting 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. The written action is effective when signed by the required number of governors, unless a different effective time is provided in the written action. When written action is permitted to be taken by less than all governors, all governors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

(14) If the board designates a person as "chief manager," "president," "chief executive officer," "CEO," or another title of similar import, that person shall:

(i) serve as an agent of the limited liability company at the will of the board, without prejudice to any rights the person may have under a contract with the limited liability company;

(ii) have general active management of the business of the limited liability company, subject to the supervision and control of the board;

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

(iv) 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 board of governors to some other officer or agent of the limited liability company;

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

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

(15) If the board designates a person as "treasurer," "chief financial officer," "CFO," or another title of similar import, that person shall:

(i) serve as an agent of the limited liability company at the will of the board, without prejudice to any rights the person may have under a contract with the limited liability company;

(ii) keep accurate financial records for the limited liability company;

(iii) deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of governors;

(iv) endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of governors, making proper vouchers for them;

(v) disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of governors;

(vi) give to the chief executive officer and the board of governors, whenever requested, an account of all transactions by the chief financial officer and of the financial condition of the limited liability company; and

(vii) perform other duties prescribed by the board of governors or by the chief executive officer.

(16) The consent of all members is required to:

(i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities, provided that member consent is not required for:

(A) the grant of a security interest in all or substantially all of the company's property and assets, whether or not in the usual and regular course of its business; or

(B) transfer of any or all of the company's property to an organization all the ownership interests of which are owned directly or indirectly through wholly owned organizations, by the company;

(ii) approve a merger, conversion, or domestication under sections 322C.1001 to 322C.1015; and

(iii) amend the operating agreement.

(17) Subject to section 322C.1204, subdivision 3, for purposes of this subdivision, each member possesses voting power in proportion to the member's interest in distributions of the limited liability company prior to dissolution and a majority of the voting power of the members is a quorum at a meeting of the members.

Subd. 5. **Member consent.** Any member may demand a meeting of the members to take action requiring consent of members under this chapter upon not less than 20 days' notice to each member in a record of the date and time of the meeting. Any meeting held upon member notice shall be held at the limited liability company's principal place of business if located within this state, and at the registered office if the principal place of business is not located within the state. Any action requiring the consent of members under this chapter may be taken or approved without a meeting by the written consent of the members holding the voting power required to take such action at a duly called meeting at which all members were present. A member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

Subd. 6. **Impact of dissolution.** The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management in any capacity.

Subd. 7. **Remuneration.** This chapter does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

History: *2014 c 157 art 1 s 36; 2015 c 39 s 33,34; 2016 c 135 art 4 s 19*

322C.0408 INDEMNIFICATION AND INSURANCE.

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

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

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

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

(e) "Special legal counsel" means counsel who has not in the preceding five years (1) represented the limited liability company or a related organization in a capacity other than special legal counsel, or (2) represented a member, governor, manager, member of a committee of the board of governors, or employee, or other person whose indemnification is in issue.

Subd. 2. **Indemnification.** (a) Subject to the provisions of subdivision 4, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(1) has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(2) acted in good faith;

(3) received no improper personal benefit and complied with the duties stated in sections 322C.0405 and 322C.0409, if applicable;

(4) in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

(5) in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the best interests of the limited liability company, or in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (3), reasonably believed that the conduct was not opposed to the best interests of the limited liability company. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the limited liability company if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.

Subd. 3. **Advances.** Subject to the provisions of subdivision 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:

(1) upon receipt by the limited liability company of a written affirmation by the person of a good faith belief that the criteria for indemnification in subdivision 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the limited liability company, if it is ultimately determined that the criteria for indemnification have not been satisfied; and

(2) after a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by clause (1) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

Subd. 4. **Prohibition or limit on indemnification or advances.** The articles of organization or the operating agreement 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.

Subd. 5. **Reimbursement to witnesses.** This section does not require, or limit the ability of, a limited liability company to reimburse expenses, including attorney fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

Subd. 6. **Determination of eligibility.** (a) All determinations whether indemnification of a person is required because the criteria in subdivision 2 have been satisfied and whether a person is entitled to payment

or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 must be made:

(1) in a board-managed limited liability company:

(i) by the board of governors by a majority of a quorum, provided that governors who are, at the time, parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;

(ii) if a quorum under item (i) cannot be obtained, by a majority of a committee of the board of governors, consisting solely of two or more governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of governors including governors who are parties; and

(iii) if a determination is not made under item (i) or (ii), by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to item (i) or (ii) or, if the requisite quorum of the full board of governors cannot be obtained and the committee cannot be established, by a majority of the full board of governors including governors who are parties;

(2) in all other cases, by the affirmative vote of the members, subject to section 322C.1204, subdivision 3, with each member having voting power in proportion to the member's interest in distributions of the limited liability company prior to dissolution, but the membership interests held by parties to the proceeding must not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or

(3) if an adverse determination is made under clause (1) or (2), or if no determination is made under clause (1) or (2) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the limited liability company or (ii) a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a member, governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made (i) in a board-managed limited liability company, by an annually appointed committee of the board of governors, having at least one member who is a governor, which committee shall report at least annually to the board of governors concerning its actions and (ii) in all other cases by a committee appointed annually by the members, having at least one committee member who is a member of the limited liability company, which committee shall report at least annually to the board of governors concerning its actions.

Subd. 7. **Insurance.** A limited liability company may purchase and maintain insurance on behalf of a member, manager, or governor of the company against liability asserted against or incurred by the member, manager, or governor in that capacity or arising from that status even if, under section 322C.0110, subdivision 7, the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability and whether or not the limited liability company would have been required to indemnify the person against the liability under this section.

Subd. 8. **Disclosure.** A limited liability company that indemnifies or advances expenses to a person according to this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members.

Subd. 9. **Indemnification of other persons.** Nothing in this section must be construed to limit the power of the limited liability company to indemnify persons other than a governor, manager, member, employee, or member of a committee of the board of the limited liability company, by contract or otherwise.

History: *2014 c 157 art 1 s 37; 2015 c 39 s 35*

322C.0409 STANDARDS OF CONDUCT FOR MEMBERS, MANAGERS, AND GOVERNORS.

Subdivision 1. **Scope of duties.** A member of a member-managed limited liability company owes to the company and, subject to section 322C.0901, subdivision 2, the other members the fiduciary duties of loyalty and care stated in subdivisions 2 and 3.

Subd. 2. **Duty of loyalty.** The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:

(i) in the conduct or winding up of the company's activities;

(ii) from a use by the member of the company's property; or

(iii) from the appropriation of a limited liability company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

Subd. 3. **Duty of care.** Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith on opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

Subd. 4. **Contractual obligation of good faith and fair dealing.** A member in a limited liability company shall discharge the member's duties and exercise any rights under this chapter or under the operating agreement consistently with the contractual obligation of good faith and fair dealing, including acting in a manner, in light of the operating agreement, that is honest, fair, and reasonable.

Subd. 5. **Fairness defense.** It is a defense to a claim under subdivision 2, clause (2), and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

Subd. 6. **Authorization and ratification.** All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

Subd. 7. **Manager-managed company rules.** In a manager-managed limited liability company, the following rules apply:

(1) Subdivisions 1, 2, 3, and 5 apply to the manager or managers and not the members.

(2) The duty stated under subdivision 2, clause (3), continues until winding up is completed.

(3) Subdivision 4 applies to the members and managers.

(4) Subdivision 6 applies only to the members.

(5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

Subd. 8. **Board-managed company rules.** In a board-managed limited liability company, the following rules apply:

(1) Subdivisions 1, 2, 3, and 5 apply to the governors and not the members.

(2) The duty stated under subdivision 2, clause (3), continues until winding up is completed.

(3) Subdivision 4 applies to the members and governors.

(4) Subdivision 6 applies only to the members.

(5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

History: *2014 c 157 art 1 s 38*

322C.0410 RIGHT OF MEMBERS, MANAGERS, GOVERNORS, AND DISSOCIATED MEMBERS TO INFORMATION.

Subdivision 1. **Member-managed company rules.** In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

(2) The company shall furnish to each member:

(i) without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(ii) on demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(3) The duty to furnish information under clause (2) also applies to each member to the extent the member knows any of the information described in clause (2).

Subd. 2. **Manager-managed and board-managed company rules.** In a manager-managed or board-managed limited liability company, the following rules apply:

(1) The informational rights stated in subdivision 1 and the duty stated in subdivision 1, clause (3), apply to the managers or governors and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:

(i) the member seeks the information for a purpose material to the member's interest as a member;

(ii) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(iii) the information sought is directly connected to the member's purpose.

(3) Within ten days after receiving a demand pursuant to clause (2), item (ii), the company shall in a record inform the member that made the demand:

(i) of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(ii) if the company declines to provide any demanded information, the company's reasons for declining.

(4) Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

Subd. 3. **Dissociated member access.** On ten days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subdivision 2, clause (2). The company shall respond to a demand made pursuant to this subdivision in the manner provided in subdivision 2, clause (3).

Subd. 4. **Access costs.** A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

Subd. 5. **Agent use.** A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subdivision 7 applies both to the agent or legal representative and the member or dissociated member.

Subd. 6. **Transferee excluded.** The rights under this section do not extend to a person as transferee.

Subd. 7. **Reasonable restrictions to access.** In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding

obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subdivision, the company has the burden of proving reasonableness.

History: *2014 c 157 art 1 s 39; 2015 c 39 s 36*

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

322C.0501 NATURE OF TRANSFERABLE INTEREST.

A transferable interest is personal property.

History: *2014 c 157 art 1 s 40*

322C.0502 TRANSFER OF TRANSFERABLE INTEREST.

Subdivision 1. **Transfers.** A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(3) subject to section 322C.0504, does not entitle the transferee to:

(i) participate in the management or conduct of the company's activities; or

(ii) except as otherwise provided in subdivision 3, have access to records or other information concerning the company's activities.

Subd. 2. **Transferee right to distributions.** A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

Subd. 3. **Transferee right to an account.** In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

Subd. 4. **Evidence of interest.** A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate. Such an interest is not a security, as that term is defined in section 336.8-102, paragraph (a), clause (15), unless the conditions specified in section 336.8-103, paragraph (c), are satisfied.

Subd. 5. **Company notice required.** A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

Subd. 6. **Violative transfers ineffective.** A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

Subd. 7. **Rights retained.** Except as otherwise provided in section 322C.0602, clause (4), item (ii), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

Subd. 8. **Transferee liability.** When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under

sections 322C.0403 and 322C.0406, subdivision 3, known to the transferee when the transferee becomes a member.

History: *2014 c 157 art 1 s 41; 2015 c 39 s 37*

322C.0503 CHARGING ORDER.

Subdivision 1. **Charging order against transferable interest.** On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

Subd. 2. **Charging order effectuation.** To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subdivision 1, the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

Subd. 3. **Foreclosure and sale.** Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to section 322C.0502.

Subd. 4. **Extinguishing charging order.** At any time before foreclosure under subdivision 3, the member or transferee whose transferable interest is subject to a charging order under subdivision 1 may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

Subd. 5. **Succession to rights of judgment creditor.** At any time before foreclosure under subdivision 3, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

Subd. 6. **Exemption laws applicable.** This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

Subd. 7. **Exclusive remedy.** This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

History: *2014 c 157 art 1 s 42*

322C.0504 POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER.

If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in section 322C.0502, subdivision 3, and, for the purposes of settling the estate, the rights of a current member under section 322C.0410.

History: *2014 c 157 art 1 s 43*

MEMBER'S DISSOCIATION

322C.0601 MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.

Subdivision 1. **Power to dissociate.** A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under section 322C.0602, clause (1).

Subd. 2. **Wrongful dissociation.** A person's dissociation from a limited liability company is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement; or

(2) occurs before the termination of the company and:

(i) the person withdraws as a member by express will;

(ii) the person is expelled as a member by judicial order under section 322C.0602, clause (5);

(iii) the person is dissociated under section 322C.0602, clause (7), item (i), by becoming a debtor in bankruptcy; or

(iv) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

Subd. 3. **Liability for wrongful dissociation.** A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 322C.0901, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

History: *2014 c 157 art 1 s 44*

322C.0602 EVENTS CAUSING DISSOCIATION.

A person is dissociated as a member from a limited liability company when:

(1) the company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person is expelled as a member pursuant to the operating agreement;

(4) the person is expelled as a member by the unanimous consent of the other members if:

(i) it is unlawful to carry on the company's activities with the person as a member;

(ii) there has been a transfer of all of the person's transferable interest in the company, other than:

(A) a transfer for security purposes; or

(B) a charging order in effect under section 322C.0503 which has not been foreclosed;

(iii) the person is a corporation and, within 90 days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation,

the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

(iv) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the company, the person is expelled as a member by judicial order because the person:

(i) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;

(ii) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 322C.0409; or

(iii) has engaged, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;

(6) in the case of a person who is an individual:

(i) the person dies; or

(ii) in a member-managed limited liability company:

(A) a guardian or general conservator for the person is appointed; or

(B) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under this chapter or the operating agreement;

(7) in a member-managed limited liability company, the person:

(i) becomes a debtor in bankruptcy;

(ii) executes an assignment for the benefit of creditors; or

(iii) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

(9) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;

(10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

(11) the company participates in a merger under sections 322C.1001 to 322C.1015, if:

(i) the company is not the surviving entity; or

(ii) otherwise as a result of the merger, the person ceases to be a member;

(12) the company participates in a conversion under sections 322C.1001 to 322C.1015;

(13) the company participates in a domestication under sections 322C.1001 to 322C.1015, if, as a result of the domestication, the person ceases to be a member; or

(14) the company terminates.

History: *2014 c 157 art 1 s 45*

322C.0603 EFFECT OF PERSON'S DISSOCIATION AS MEMBER.

Subdivision 1. **Effect of dissociation.** When a person is dissociated as a member of a limited liability company:

(1) the person's right to participate as a member in the management and conduct of the company's activities terminates;

(2) if the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to sections 322C.0504 and 322C.1001 to 322C.1015, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

Subd. 2. **No discharge.** A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members that the person incurred while a member.

History: *2014 c 157 art 1 s 46*

DISSOLUTION AND WINDING UP

322C.0701 EVENTS CAUSING DISSOLUTION.

Subdivision 1. **Dissolution events.** A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) following the admission of the initial member or members, the passage of 90 consecutive days during which the company has no members;

(4) on application by a member, the entry by appropriate court of an order dissolving the company on the grounds that:

(i) the conduct of all or substantially all of the company's activities is unlawful; or

(ii) it is not reasonably practicable to carry on the company's activities in conformity with the articles of organization and the operating agreement;

(5) on application by a member, the entry by appropriate court of an order dissolving the company on the grounds that the managers, governors, or those members in control of the company:

(i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(ii) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or

(6) on application by the attorney general in an action commenced pursuant to section 322C.0708, the entry by appropriate court of an order dissolving the company on grounds specified in section 322C.0708.

Subd. 2. **Alternative remedies.** In a proceeding brought under subdivision 1, clause (5), the court may order a remedy other than dissolution, which may include the sale for fair value of all membership interests a member owns in a limited liability company to the limited liability company or one or more of the other members. A remedy other than dissolution may be ordered in any case where that remedy would be appropriate under all the facts and circumstances of the case.

Subd. 3. **Venue.** A proceeding brought under subdivision 1, clause (5), must be brought in a court within the county in which the registered office of the limited liability company is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

History: *2014 c 157 art 1 s 47*

322C.0702 WINDING UP.

Subdivision 1. **Winding up required.** A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

Subd. 2. **Winding up process.** In winding up its activities, a limited liability company:

(1) shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and

(2) may:

(i) file with the secretary of state a statement of dissolution stating the name of the company and that the company is dissolved;

(ii) preserve the company activities and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(iv) transfer the company's property;

(v) settle disputes by mediation or arbitration;

(vi) file with the secretary of state a statement of termination stating the name of the company and that the company is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

Subd. 3. **Winding up by legal representative.** If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under section 322C.0407, subdivision 3, and is deemed to be a manager for the purposes of section 322C.0304, subdivision 1, clause (2).

Subd. 4. **Winding up by person other than legal representative.** If the legal representative under subdivision 3 declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subdivision:

(1) has the powers of a sole manager under section 322C.0407, subdivision 3, and is deemed to be a manager for the purposes of section 322C.0304, subdivision 1, clause (2); and

(2) shall promptly file with the secretary of state an amendment to the company's articles of organization to:

(i) state that the company has no members;

(ii) state that the person has been appointed pursuant to this subdivision to wind up the company; and

(iii) provide the street address of the person.

Subd. 5. **Judicial supervision.** The appropriate court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:

(1) on application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(i) the company does not have any members;

(ii) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(iii) within a reasonable time following the dissolution a person has not been appointed pursuant to subdivision 4; or

(3) in connection with a proceeding under section 322C.0701, subdivision 1, clause (4) or (5).

History: *2014 c 157 art 1 s 48*

322C.0703 KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

Subdivision 1. **Notice of known claims.** Except as otherwise provided in subdivision 4, a dissolved limited liability company may give notice of a known claim under subdivision 2 that has the effect as provided in subdivision 3.

Subd. 2. **Notice requirements.** A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

Subd. 3. **Claims barred.** A claim against a dissolved limited liability company is barred if the requirements of subdivision 2 are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the company:

(i) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within 90 days after the claimant receives the notice; and

(ii) the claimant does not commence the required action within the 90 days.

Subd. 4. **Bar limitation.** This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

History: *2014 c 157 art 1 s 49*

322C.0704 OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

Subdivision 1. **Publication of notice.** A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them according to the notice.

Subd. 2. **Published notice requirements.** The notice authorized by subdivision 1 must:

(1) be published at least once in a newspaper of general circulation in the county or counties in this state in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the county or counties in which the company's registered office is or was last located;

(2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced within five years after publication of the notice.

Subd. 3. **Claims barred.** If a dissolved limited liability company publishes a notice according to subdivision 2, unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the notice, the claim of each of the following claimants is barred:

(1) a claimant that did not receive notice in a record under section 322C.0703;

(2) a claimant whose claim was timely sent to the company but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

Subd. 4. **Claims enforcement.** A claim not barred under this section may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this clause does not exceed the total amount of assets distributed to the person after dissolution.

History: *2014 c 157 art 1 s 50*

322C.0705 ADMINISTRATIVE TERMINATION.

(a) A domestic limited liability company that has not filed a renewal pursuant to this section is administratively terminated. The secretary of state shall issue a certificate of administrative termination

which must be filed in the Office of the Secretary of State. The secretary of state must also make available in an electronic format the names of the terminated limited liability companies.

(b) A non-Minnesota limited liability company that has not filed a renewal pursuant to this section shall have its authority to do business in Minnesota revoked pursuant to section 322C.0806. The secretary of state must issue a certificate of revocation which must be filed in the Office of the Secretary of State. The secretary of state must also make available in an electronic format the names of the revoked non-Minnesota limited liability companies.

History: *2014 c 157 art 1 s 51*

322C.0706 REINSTATEMENT.

(a) If a limited liability company is administratively terminated or has its authority to do business in Minnesota revoked, or if a company governed by chapter 322B was administratively terminated pursuant to section 322B.960 prior to January 1, 2018, it may retroactively reinstate its existence or authority to do business by filing a single annual renewal and paying a $25 fee.

(b) For a domestic limited liability company, or a company that was administratively terminated pursuant to section 322B.960 prior to January 1, 2018, filing the annual renewal with the secretary of state:

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

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

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

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

History: *2014 c 157 art 1 s 52; 2018 c 103 s 28*

322C.0707 DISTRIBUTION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANY'S ACTIVITIES.

Subdivision 1. **Application of assets to discharge obligations.** In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

Subd. 2. **Distributions of surplus.** After a limited liability company complies with subdivision 1, any surplus must be distributed in the following order, subject to any charging order in effect under section 322C.0503:

(1) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 322C.0502.

Subd. 3. **Proportionate distribution.** If a limited liability company does not have sufficient surplus to comply with subdivision 2, clause (1), any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

Subd. 4. **Form of distribution.** All distributions made under subdivisions 2 and 3 must be paid in money.

History: *2014 c 157 art 1 s 53*

322C.0708 ACTION BY ATTORNEY GENERAL.

Subdivision 1. **When permitted.** A limited liability company may be involuntarily dissolved, wound up, and terminated by a decree of a court in this state in an action filed by the attorney general when it is established that:

(1) the articles of organization were procured through fraud;

(2) the limited liability company was organized for a purpose not permitted by this chapter;

(3) the limited liability company failed to comply with the requirements essential to organization under this chapter;

(4) the limited liability company has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter; or

(5) the limited liability company has acted, or failed to act, in a manner that constitutes surrender or abandonment of the limited liability company privileges or enterprise.

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: *2014 c 157 art 1 s 54*

FOREIGN LIMITED LIABILITY COMPANIES

322C.0801 GOVERNING LAW.

Subdivision 1. **Scope of foreign law.** The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

(1) the internal affairs of the company; and

(2) the liability of a member as member, a manager as manager, and a governor as governor for the debts, obligations, or other liabilities of the company.

Subd. 2. **Restriction on denial of certificate of authority.** A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

Subd. 3. **No increase in foreign company's powers.** A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

History: *2014 c 157 art 1 s 55*

322C.0802 APPLICATION FOR CERTIFICATE OF AUTHORITY.

Before transacting business in this state, a foreign limited liability company shall obtain a certificate of authority to transact business in this state by filing an application with the secretary of state together with a total fee of $185. The application must state:

(1) the name of the company and any alternate name adopted pursuant to section 322C.0805, subdivision 1;

(2) the name of the state or other jurisdiction under whose law the company is formed;

(3) a statement that the foreign limited liability company has complied with the organizational laws in the jurisdiction under whose laws the company is formed;

(4) the street address of the company's principal place of business and, if the law of the jurisdiction under which the company is formed requires the company to maintain an office in that jurisdiction, the street address of the required office; and

(5) the name and street address of the company's initial registered office and agent for service of process in this state.

History: *2014 c 157 art 1 s 56*

322C.0803 TRANSACTIONS NOT CONSTITUTING TRANSACTING BUSINESS.

Subdivision 1. **Activities not constituting transacting business.** A foreign limited liability company shall not be considered to be transacting business in this state for the purposes of this chapter solely by reason of carrying on in this state any one or more of the following, including:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its managers, governors, or members or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(5) holding title to and managing real or personal property, or any interest therein, situated in this state, as executor of the will or administrator of the estate of any decedent, as trustee of any trust, or as guardian of any person or conservator of any person's estate;

(6) making, participating in, or investing in loans or creating, as borrower or lender, or otherwise acquiring indebtedness or mortgages or other security interests in real or personal property;

(7) securing or collecting its debts or enforcing any rights in property securing them; or

(8) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.

Subd. 2. **Property ownership.** For purposes of sections 322C.0801 to 322C.0809, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subdivision 1, constitutes transacting business in this state.

Subd. 3. **Limitations.** This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than this chapter.

History: *2014 c 157 art 1 s 57*

322C.0804 FILING OF CERTIFICATE OF AUTHORITY.

Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application of a foreign limited liability company; prepare, sign, and file a certificate of authority to transact business in this state; and send an image of the filed certificate to the company or its representative.

History: *2014 c 157 art 1 s 58*

322C.0805 NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY COMPANY.

Subdivision 1. **Noncomplying name.** A foreign limited liability company whose name does not comply with section 322C.0108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 322C.0108. A foreign limited liability company that adopts an alternate name under this subdivision and obtains a certificate of authority with the alternate name need not comply with section 333.01. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the company is authorized under section 333.01 to transact business in this state under another name. A foreign limited liability company may adopt an alternate name even if its name complies with section 322C.0108.

Subd. 2. **Change in name.** If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with section 322C.0108, it may not thereafter transact business in this state until it complies with subdivision 1 and obtains an amended certificate of authority.

History: *2014 c 157 art 1 s 59*

322C.0806 REVOCATION OF CERTIFICATE OF AUTHORITY.

Subdivision 1. **Grounds.** The certificate of authority of a foreign limited liability company to transact business in this state shall be revoked by the secretary of state if it fails:

(1) to pay any fee due under the provisions of this chapter;

(2) to designate a registered agent when a vacancy occurs in that office, or when the appointed registered agent resigns or becomes disqualified or incapacitated;

(3) to file certificates of merger or name change, as required in section 322C.0805, subdivision 2; or

(4) to file an annual renewal.

Subd. 2. **Consequences of specific grounds for default.** On finding that a default has occurred under subdivision 1, clauses (1) to (3), the secretary of state shall notify the foreign limited liability company that the default exists and that its certificate of authority will be revoked unless the default shall be cured within 30 days.

Subd. 3. **Revocation duties of the secretary of state.** (1) The secretary of state shall revoke the certificate of authority of a foreign limited liability company that is in default under subdivision 1, clause (4), for failure to file an annual renewal under section 5.34.

(2) The secretary of state shall revoke the certificate of authority of a foreign limited liability company that is in default under subdivision 1, clauses (1) to (3), if the default is not cured within the time provided under subdivision 2; provided that for good cause shown the secretary of state may extend the 30-day period from time to time, but in no event may the aggregate of all extensions granted exceed 180 days or the period of time of any applicable extension granted by the Department of Revenue for filing the income tax return of the corporation, whichever is greater.

Subd. 4. **Related duties of secretary of state.** (1) Upon revoking the certificate of authority of a foreign limited liability company because of a default under subdivision 1, clauses (1) to (3), the secretary of state shall:

(i) issue a certificate of revocation; and

(ii) provide a notice of the revocation to the foreign limited liability company.

(2) Upon revoking the certificate of authority of a foreign limited liability company because of a default under subdivision 1, clause (4), the secretary of state shall issue a certificate of revocation, and the certificate must be filed in the Office of the Secretary of State. No further notice to the foreign limited liability company is required.

(3) The secretary of state shall also make the names of the revoked foreign limited liability companies available in an electronic format.

Subd. 5. **Authority to transact business ceases.** Upon the issuance of such certificate of revocation, the authority of the foreign limited liability company to transact business in this state shall cease.

History: *2014 c 157 art 1 s 60*

322C.0807 WITHDRAWAL OF FOREIGN LIMITED LIABILITY COMPANY.

Subdivision 1. **Application.** If a foreign limited liability company holding a certificate of authority desires to withdraw, it shall file with the secretary of state an application for withdrawal.

Subd. 2. **Contents.** The application for withdrawal shall set forth:

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

(2) that it has no property located in this state and has ceased to transact business therein;

(3) that its governing body has duly determined to surrender its authority to transact business in this state;

(4) that it revokes the authority of its registered agent in this state to accept service of process;

(5) the address to which the secretary of state shall mail a copy of any process against the foreign limited liability company that may be served upon the secretary of state;

(6) that it will pay to the commissioner of management and budget the amount of any additional license fees properly found by the secretary of state to be then due from such foreign limited liability company; and

(7) additional information required or demanded to enable the secretary of state to determine the additional license fees, if any, payable by the foreign limited liability company.

Subd. 3. **Execution.** The application for withdrawal shall be executed on behalf of the foreign limited liability company pursuant to section 322C.0203.

Subd. 4. **Filing.** The application for withdrawal shall be delivered to the secretary of state. Upon receiving and examining the same, and upon finding that it conforms to the provisions of this chapter, the secretary of state shall, when all license fees, filing fees, and other charges have been paid as required by law, file the same and shall issue and record a certificate of withdrawal. Upon the issuance of the certificate, the authority of the foreign limited liability company to transact business in this state shall cease.

Subd. 5. **Authority to transact business ceases.** The filing with the secretary of state by the corporation of a certificate of dissolution, or a certificate of merger if the foreign limited liability company is not the surviving limited liability company from the proper officer of the state or country under the laws of which the foreign limited liability company is organized, constitutes a valid application of withdrawal and the authority of the foreign limited liability company to transact business in this state shall cease upon filing of the certificate.

History: *2014 c 157 art 1 s 61*

322C.0808 EFFECT OF FAILURE TO HAVE CERTIFICATE OF AUTHORITY.

Subdivision 1. **Certificate of authority required.** A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

Subd. 2. **Actions not affected.** The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in this state.

Subd. 3. **Limitation on liability.** A member, manager, or governor of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in this state without a certificate of authority.

Subd. 4. **Secretary of state as agent.** If a foreign limited liability company transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.

History: *2014 c 157 art 1 s 62*

322C.0809 ACTION BY ATTORNEY GENERAL.

The attorney general may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of sections 322C.0801 to 322C.0809.

History: *2014 c 157 art 1 s 63*

322C.0810 AMENDMENT OF FOREIGN REGISTRATION STATEMENT.

A registered foreign limited liability company shall deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the company;

(2) the company's jurisdiction of formation;

(3) an address required by section 322C.0802, clause (4); or

(4) the information required by section 322C.0802, clause (5).

History: *2018 c 103 s 29*

ACTIONS BY MEMBERS

322C.0901 DIRECT ACTION BY MEMBER.

Subdivision 1. **Direct actions allowed.** Subject to subdivision 2, a member may maintain a direct action against another member, a manager, a governor, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

Subd. 2. **Action requirements.** A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

History: *2014 c 157 art 1 s 64*

322C.0902 DERIVATIVE ACTION.

A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, the managers of a manager-managed limited liability company, or the board of governors of a board-managed limited liability company requesting that they cause the company to bring an action to enforce the right, and the member, manager, or board does not bring the action within a reasonable time; or

(2) a demand under clause (1) would be futile.

History: *2014 c 157 art 1 s 65; 2015 c 39 s 38*

322C.0903 PROPER PLAINTIFF.

Subdivision 1. **Member status required.** Except as otherwise provided in subdivision 2, a derivative action under section 322C.0902 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

Subd. 2. **Effect of plaintiff death.** If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

History: *2014 c 157 art 1 s 66*

322C.0904 PLEADING.

In a derivative action under section 322C.0902, the complaint must state with particularity:

(1) the date and content of the plaintiff's demand and the response to the demand by the other members, managers, or board of governors; or

(2) if a demand has not been made, the reasons a demand under section 322C.0902, clause (1), would be futile.

History: *2014 c 157 art 1 s 67*

322C.0905 SPECIAL LITIGATION COMMITTEE.

Subdivision 1. **Committee authorization.** If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subdivision does not prevent the court from enforcing a person's right to information under section 322C.0410 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

Subd. 2. **Committee composition.** A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

Subd. 3. **Requirements for appointment of committee.** A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(i) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(ii) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants;

(2) in a manager-managed limited liability company:

(i) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(ii) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants; and

(3) in a board-managed limited liability company:

(i) by a majority of governors not named as defendants or plaintiffs in the proceeding; and

(ii) if all governors are named as defendants or plaintiffs in the proceeding, by a majority of the governors named as defendants.

Subd. 4. **Determinations of committee.** After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

(3) be settled on terms approved by the committee; or

(4) be dismissed.

Subd. 5. **Committee procedures.** After making a determination under subdivision 4, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subdivision 1 and allow the action to proceed under the direction of the plaintiff.

History: *2014 c 157 art 1 s 68*

322C.0906 PROCEEDS AND EXPENSES.

Subdivision 1. **Ownership of proceeds.** Except as otherwise provided in subdivision 2:

(1) any proceeds or other benefits of a derivative action under section 322C.0902, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

Subd. 2. **Expenses awarded.** If a derivative action under section 322C.0902 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

History: *2014 c 157 art 1 s 69*

MERGER, CONVERSION, AND DOMESTICATION

322C.1001 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 322C.1001 to 322C.1015, the terms defined in this section have the meanings given them.

Subd. 2. **Constituent limited liability company.** "Constituent limited liability company" means a constituent organization that is a limited liability company.

Subd. 3. **Constituent organization.** "Constituent organization" means an organization that is party to a merger or exchange.

Subd. 4. **Converted organization.** "Converted organization" means the organization into which a converting organization converts pursuant to sections 322C.1007 to 322C.1010.

Subd. 5. **Converting limited liability company.** "Converting limited liability company" means a converting organization that is a limited liability company.

Subd. 6. **Converting organization.** "Converting organization" means an organization that converts into another organization pursuant to section 322C.1007.

Subd. 7. **Domesticated company.** "Domesticated company" means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 322C.1011 to 322C.1014.

Subd. 8. **Domesticating company.** "Domesticating company" means the company that effects a domestication pursuant to sections 322C.1011 to 322C.1014.

Subd. 9. **Governing statute.** "Governing statute" means the statute that governs an organization's internal affairs.

Subd. 10. **Organization.** "Organization" means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.

Subd. 11. **Organizational documents.** "Organizational documents" means:

(1) for a domestic or foreign general partnership, its partnership agreement;

(2) for a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(3) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;

(4) for a business trust, its agreement of trust and declaration of trust;

(5) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(6) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it, in each case as provided or authorized by its governing statute.

Subd. 11a. **Parent organization.** "Parent organization" of a limited liability company means an organization that owns, directly or indirectly through one or more other wholly owned organizations, all of the rights to distributions and all of the management rights of a limited liability company.

Subd. 12. **Personal liability.** "Personal liability" means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(1) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(2) by the organization's organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, ha ving an interest or interests in, or being a member or members of the organization.

Subd. 13. **Surviving organization.** "Surviving organization" means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

Subd. 14. **Wholly owned subsidiary.** "Wholly owned subsidiary" means a limited liability company in which all of the rights to distributions and all of the management rights are owned directly or indirectly by a parent organization.

History: *2014 c 157 art 1 s 70; 2015 c 39 s 39,40; 2018 c 103 s 30,31*

322C.1002 MERGER; EXCHANGE.

Subdivision 1. **Prerequisites for merger.** A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 322C.1003 to 322C.1005, and a plan of merger if:

(1) the governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(3) each of the other organizations complies with its governing statute in effecting the merger.

Subd. 2. **Prerequisites for exchange.** A limited liability company may engage in an exchange with one or more other constituent organizations pursuant to this section by which one of the constituent organizations acquires all of the ownership interests of one or more classes or series of another constituent organization pursuant to this section, sections 322C.1003 to 322C.1005, and a plan of exchange if:

(1) the governing statute of each of the other constituent organizations authorizes the exchange;

(2) the exchange is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(3) each of the other constituent organizations complies with its governing statute in effecting the exchange.

Subd. 3. **Plan of merger or exchange.** A plan of merger or exchange must be in a record and must include:

(1) the name and form of each constituent organization and:

(i) in the case of a merger, the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect; and

(ii) in the case of an exchange, the name of the acquiring organization;

(2)(i) in the case of a merger, the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration; and

(ii) in the case of an exchange, the terms and conditions of the exchange, including the manner and basis of exchanging the ownership interests to be acquired for securities of, or other ownership interests in, the acquiring organization or any other organization or, in whole or part, for money or other property;

(3) in the case of a merger, if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record;

(4) in the case of a merger, if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record; and

(5) any other provisions with respect to the proposed merger or exchange that are considered necessary or desirable.

History: *2014 c 157 art 1 s 71*

322C.1003 ACTION ON PLAN OF MERGER OR EXCHANGE BY CONSTITUENT LIMITED LIABILITY COMPANY.

Subdivision 1. **Member consent required.** Subject to section 322C.1015, a plan of merger or exchange must be consented to by all the members of a constituent limited liability company.

Subd. 2. **Amendment of plan or abandonment of merger or exchange.** Subject to section 322C.1015 and any contractual rights, after a merger or exchange is approved, and at any time before the merger or exchange becomes effective according to this chapter, a constituent limited liability company may amend the plan or abandon the merger or exchange:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

History: *2014 c 157 art 1 s 72*

322C.1004 FILINGS REQUIRED FOR MERGER OR EXCHANGE; EFFECTIVE DATE AND TIME.

Subdivision 1. **Articles of merger or exchange.** After each constituent organization has approved a merger or exchange, articles of merger or exchange must be signed on behalf of:

(1) each constituent limited liability company, as provided in section 322C.0203, subdivision 1; and

(2) each other constituent organization, as provided in its governing statute.

Subd. 2. **Contents of articles of merger.** Articles of merger under this section must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(i) if it will be a limited liability company, the company's articles of organization; or

(ii) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(7) if the surviving organization is a foreign organization not authorized to transact business in this state, the street address of an office that the secretary of state may use for the purposes of section 322C.1005, subdivision 2; and

(8) any additional information required by the governing statute of any constituent organization.

Subd. 3. **Contents of articles of exchange.** Articles of exchange under this section must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the manner and basis of exchanging the ownership interests to be acquired for securities of, or other ownership interests in, the acquiring organization or any other organization or, in whole or part, for money or other property;

(3) the date the exchange is effective under the governing statute of the acquiring organization;

(4) a statement as to each constituent organization that the exchange was approved as required by the organization's governing statute; and

(5) any additional information required by the governing statute of any constituent organization.

Subd. 4. **Delivery of articles of merger or exchange.** Each constituent limited liability company shall file the articles of merger, together with a total fee of $60, with the Office of the Secretary of State.

Subd. 5. **Effective date and time of merger or exchange.** (a) A merger becomes effective under sections 322C.1001 to 322C.1015:

(1) if the surviving organization is a limited liability company, upon the later of:

(i) compliance with subdivision 4; or

(ii) subject to section 322C.0205, subdivision 3, such effective time as is specified in the articles of merger; or

(2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

(b) An exchange becomes effective under sections 322C.1001 to 322C.1015 upon the later of:

(1) compliance with subdivision 4; or

(2) subject to section 322C.0205, subdivision 3, such effective time as is specified in the articles of exchange.

History: *2014 c 157 art 1 s 73*

322C.1005 EFFECT OF MERGER.

Subdivision 1. **Effect on constituent organizations.** When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of sections 322C.0701 to 322C.0707;

(9) if the surviving organization is created by the merger:

(i) if it is a limited liability company, the articles of organization become effective; or

(ii) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger or the organizational document that created the organization become effective.

Subd. 2. **Foreign organization.** A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subdivision. Service on the secretary of state under this subdivision must be made in the same manner and has the same consequences as in section 322C.0116, subdivisions 3 and 4.

History: *2014 c 157 art 1 s 74*

322C.1006 EFFECT OF EXCHANGE.

When an exchange becomes effective, the membership interests in a limited liability company to be exchanged under the terms of the plan are considered to be exchanged. The members owning those membership interests are entitled only to the ownership interests, securities, money, or other property into which those membership interests have been converted or for which those membership interests have been exchanged according to the plan.

History: *2014 c 157 art 1 s 75*

322C.1007 CONVERSION.

Subdivision 1. **Conversion requirements.** Pursuant to this section, sections 322C.1008 to 322C.1010, and a plan of conversion, an organization other than a limited liability company, a foreign limited liability company, a nonprofit corporation, or an organization owning assets irrevocably dedicated to a charitable purpose, may convert to a limited liability company other than a nonprofit limited liability company, and a limited liability company other than a nonprofit limited liability company may convert to an organization other than a foreign limited liability company, or a corporation governed by chapter 304A, if:

(1) the other organization's governing statute authorizes the conversion;

(2) the conversion is not prohibited by other law of this state or the law of the jurisdiction that enacted the other organization's governing statute; and

(3) the other organization complies with its governing statute in effecting the conversion.

Subd. 2. **Contents of plan of conversion.** A plan of conversion must be in a record and must include:

(1) the name and form of the organization and the jurisdiction of the organization's governing statute before conversion;

(2) the name and form of the organization and the jurisdiction of the organization's governing statute after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization that are, or are proposed to be, in a record.

History: *2014 c 157 art 1 s 76; 2015 c 39 s 41; 2016 c 135 art 4 s 20*

322C.1008 ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED LIABILITY COMPANY.

Subdivision 1. **Member consent required.** Subject to section 322C.1015, a plan of conversion must be consented to by all the members of a converting limited liability company.

Subd. 2. **Amendment of plan or abandonment of conversion.** Subject to section 322C.1015 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the secretary of state for filing under section 322C.1009, a converting limited liability company may amend the plan or abandon the conversion:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

History: *2014 c 157 art 1 s 77*

322C.1009 FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE AND TIME.

Subdivision 1. **Articles of conversion.** After a plan of conversion is approved:

(1) if the converting organization is a converting limited liability company, the converting limited liability company shall file articles of conversion with the secretary of state, together with a total fee of $60, which articles of conversion must be signed as provided in section 322C.0203, subdivision 1, and must include:

(i) a statement that the limited liability company is converting into another organization;

(ii) the name and form of the converted organization and the jurisdiction of its governing statute;

(iii) the time the conversion is effective under the governing statute of the converted organization;

(iv) a statement that the conversion was approved as required by this chapter;

(v) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(vi) if the converted organization is a foreign organization not authorized to transact business in this state, the street address of an office that the secretary of state may use for the purposes of section 322C.1010, subdivision 3; and

(2) if the converting organization is not a converting limited liability company, the converting organization shall file articles of conversion with the secretary of state, together with a total fee of $60, which articles of conversion must be signed as provided in section 322C.0203, subdivision 1, and must include:

(i) articles of organization for the limited liability company into which the converting organization is converting, which articles of organization must include the information required by section 322C.0201, subdivision 2, clauses (1) and (2);

(ii) a statement that the converting organization is converting into a limited liability company from another organization;

(iii) the name and form of the converting organization and the jurisdiction of its governing statute; and

(iv) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

Subd. 2. **Effective date and time of conversion.** A conversion becomes effective:

(1) if the converted organization is a limited liability company, when the articles of conversion are filed with the secretary of state or on a later date or later time specified in the articles of conversion; and

(2) if the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

Subd. 3. **Certificate.** The secretary of state shall issue to the converted organization or its legal representative a certificate of conversion.

History: *2014 c 157 art 1 s 78; 2015 c 39 s 42*

322C.1010 EFFECT OF CONVERSION.

Subdivision 1. **Same entity.** An organization that has been converted pursuant to sections 322C.1007 to 322C.1009 is for all purposes the same entity that existed before the conversion.

Subd. 2. **Effect on converting organization.** When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization;

(2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;

(3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of sections 322C.0701 to 322C.0707.

Subd. 3. **Foreign organization.** A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subdivision. Service on the secretary of state under this subdivision must be made in the same manner and has the same consequences as in section 322C.0116, subdivisions 3 and 4.

History: *2014 c 157 art 1 s 79*

322C.1011 DOMESTICATION.

Subdivision 1. **Foreign limited liability company.** A foreign limited liability company may become a limited liability company pursuant to this section, sections 322C.1011 to 322C.1013, and a plan of domestication if:

(1) the foreign limited liability company's governing statute authorizes the domestication, whether described by the laws of the foreign jurisdiction as a domestication, a conversion, or otherwise;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

Subd. 2. **Domestic limited liability company.** A limited liability company may become a foreign limited liability company pursuant to this section, sections 322C.1011 to 322C.1013, and a plan of domestication if:

(1) the foreign limited liability company's governing statute authorizes the domestication, whether described by the laws of the foreign jurisdiction as a domestication, a conversion, or otherwise;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

Subd. 3. **Plan of domestication.** A plan of domestication must be in a record and must include:

(1) the name of the domesticating company before domestication and the jurisdiction of its governing statute;

(2) the name of the domesticated company after domestication and the jurisdiction of its governing statute;

(3) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and

(4) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

History: *2014 c 157 art 1 s 80; 2016 c 135 art 4 s 21,22*

322C.1012 ACTION ON PLAN OF DOMESTICATION BY DOMESTICATING LIMITED LIABILITY COMPANY.

Subdivision 1. **Consent required.** A plan of domestication must be consented to:

(1) by all the members, subject to section 322C.1015, if the domesticating company is a limited liability company; and

(2) as provided in the domesticating company's governing statute, if the company is a foreign limited liability company.

Subd. 2. **Amendment of plan or abandonment of domestication.** Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are filed with the secretary of state under section 322C.1013, a domesticating limited liability company may amend the plan or abandon the domestication:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

History: *2014 c 157 art 1 s 81*

322C.1013 FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE DATE.

Subdivision 1. **Articles of domestication.** After a plan of domestication is approved, a domesticating company shall file with the secretary of state articles of domestication, together with a total fee of $60, which articles of domestication must include:

(1) a statement, as the case may be, that the company has been domesticated from or into another jurisdiction;

(2) the name of the domesticating company and the jurisdiction of its governing statute;

(3) the name of the domesticated company and the jurisdiction of its governing statute;

(4) the date the domestication is effective under the governing statute of the domesticated company;

(5) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by this chapter;

(6) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

(7) if the domesticated company was a foreign limited liability company not authorized to transact business in this state, the street address of an office that the secretary of state may use for the purposes of section 322C.1014, subdivision 2.

Subd. 2. **Effective date of domestication.** A domestication becomes effective:

(1) when the articles of organization takes effect, if the domesticated company is a limited liability company; and

(2) according to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

History: *2014 c 157 art 1 s 82*

322C.1014 EFFECT OF DOMESTICATION.

Subdivision 1. **Effect on domesticating company.** When a domestication takes effect:

(1) the domesticated company is for all purposes the company that existed before the domestication;

(2) all property owned by the domesticating company remains vested in the domesticated company;

(3) all debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;

(4) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

(5) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;

(6) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(7) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of sections 322C.0701 to 322C.0707.

Subd. 2. **Foreign company.** A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation, or other liability. A domesticated company that is a foreign limited liability company and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subdivision. Service on the secretary of state under this subdivision must be made in the same manner and has the same consequences as in section 322C.0116, subdivisions 3 and 4.

Subd. 3. **Foreign jurisdiction.** If a limited liability company has adopted and approved a plan of domestication under section 322C.1011 providing for the company to be domesticated in a foreign jurisdiction,

a statement surrendering the company's articles of organization must be filed with the secretary of state setting forth:

(1) the name of the company;

(2) a statement that the articles of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction;

(3) a statement that the domestication was approved as required by this chapter; and

(4) the jurisdiction of formation of the domesticated foreign limited liability company.

History: *2014 c 157 art 1 s 83*

322C.1015 RESTRICTIONS ON APPROVAL OF MERGERS, EXCHANGES, CONVERSIONS, AND DOMESTICATIONS.

Subdivision 1. **Personal liability of member.** If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, constituent, converted, or domesticated organization, approval or amendment of a plan of merger, exchange, conversion, or domestication is ineffective without the consent of the member, unless:

(1) the company's operating agreement provides for approval of a merger, exchange, conversion, or domestication with the consent of fewer than all the members; and

(2) the member has consented to the provision of the operating agreement.

Subd. 2. **Consent.** A member does not give the consent required by subdivision 1 merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

History: *2014 c 157 art 1 s 84*

322C.1016 MERGER OF WHOLLY OWNED SUBSIDIARIES.

Subdivision 1. **When authorized.** If the parent organization is a domestic limited liability company, the parent organization may merge a wholly owned subsidiary into itself, or may merge two or more wholly owned subsidiaries into one of the wholly owned subsidiaries under this section by a resolution approved in the manner required to decide a matter in the ordinary course of the activities of the parent organization that adopts and sets forth a plan of merger that meets the requirements of subdivision 2. If the parent organization is not a domestic limited liability company and if authorized by its governing statute, the parent organization may merge a wholly owned subsidiary into itself, or may merge two or more wholly owned subsidiaries into one of the wholly owned subsidiaries by the adoption of a plan of merger that meets the requirements of subdivision 2.

Subd. 2. **Plan of merger.** The plan of merger must contain:

(1) the name of each wholly owned subsidiary that is a constituent organization in the merger, the name of the parent organization, and the name of the surviving organization;

(2) the manner and basis of converting the ownership interests and securities of the wholly owned subsidiary or subsidiaries into ownership interests or securities of the surviving organization or, in whole or in part, into money or other property; and

(3) if the surviving organization is a wholly owned subsidiary, a statement of any amendments to the articles of organization of the surviving organization that will be part of the merger.

Subd. 3. **Articles of merger; contents of articles.** Articles of merger must be prepared that contain:

(1) the plan of merger;

(2) a statement that the parent organization owns directly all of the rights to distributions and all of the management rights of each wholly owned subsidiary that is a constituent organization in the merger; and

(3) a statement that the plan of merger has been approved by the parent organization in accordance with this section.

Subd. 4. **Articles signed, filed.** The articles of merger must be signed on behalf of the parent organization and filed with the secretary of state.

Subd. 5. **Certificate.** The secretary of state shall issue a certificate of merger to the parent organization or its legal representative or, if the parent organization is a constituent organization but is not the surviving organization in the merger, to the surviving organization or its legal representative.

Subd. 6. **Nonexclusivity.** A merger among a parent organization and one or more wholly owned subsidiaries or among two or more wholly owned subsidiaries of a parent organization may be accomplished under sections 322C.1002, 322C.1003, and 322C.1004, instead of this section, in which case this section does not apply.

History: *2018 c 103 s 32*

NONPROFIT LIMITED LIABILITY COMPANIES

322C.1101 NONPROFIT LIMITED LIABILITY COMPANIES.

Subdivision 1. **Status as nonprofit limited liability company.** A limited liability company is a nonprofit limited liability company if it is organized under or governed by this chapter and its articles of organization state that it is a nonprofit limited liability company governed by this section. The status of a nonprofit limited liability company under this chapter is not determinative of its tax treatment.

Subd. 2. **Limitations on pecuniary gain and distributions to members.** A nonprofit limited liability company may not:

(1) be formed for a purpose involving pecuniary gain to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a state or local government; or

(2) pay dividends, make distributions, or pay other pecuniary remuneration, directly or indirectly, to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a state or local government.

Subd. 3. **Limitations on persons who may be members.** A natural person may not be a member of, or own any transferable interest in, a nonprofit limited liability company.

Subd. 4. **Purposes; conduct.** (a) Subject to subdivision 2:

(1) a nonprofit limited liability company may be organized under this chapter for any lawful purpose, unless another statute requires incorporation or organization for a purpose under a different law; and

(2) a nonprofit limited liability company has a general purpose of engaging in any lawful activity unless otherwise limited in its articles of organization.

(b) A nonprofit limited liability company engaging in conduct that is regulated by another statute is subject to the limitations of the other statute.

Subd. 5. **Management; provisions of chapter 317A applicable to nonprofit limited liability companies.** (a) A nonprofit limited liability company must be board-managed. The business and affairs of a nonprofit limited liability company must be managed by or under the direction of a board of governors, which will have such powers as are usually exercised by the board of directors of a nonprofit corporation governed by chapter 317A. All governors will be entitled to vote and have equal rights and preferences except as otherwise provided in the articles of organization or operating agreement. The members of the first board may be named in the articles of organization, designated, or appointed pursuant to the articles of organization, or elected by the organizer.

(b) A nonprofit limited liability company must have one or more natural persons acting as officers and exercising the functions of the offices of president and treasurer, however designated. The officers have such powers as are usually exercised by similar officers of a nonprofit corporation governed by chapter 317A. The board shall elect or appoint officers, except to the extent that the articles of organization or operating agreement provide that the members may elect or appoint officers.

(c) Section 317A.161, subdivision 11, applies to a nonprofit limited liability company as if it were a nonprofit corporation governed by chapter 317A. Section 317A.251 applies to a governor of a nonprofit limited liability company as if the governor were a director of a nonprofit corporation, and section 322C.0409 does not apply.

(d) Section 317A.255 applies to, and with regard to, a governor of a nonprofit limited liability company as if the governor were a director of a nonprofit corporation.

(e) Section 317A.257 applies to a person who serves without compensation as a governor of a nonprofit limited liability company, manager, member, or agent of a nonprofit limited liability company as if such person were serving without compensation as a director, officer, member, or agent of a nonprofit corporation.

(f) Section 317A.671 regarding the diversion of certain assets applies to a nonprofit limited liability company as if it were a nonprofit corporation governed by chapter 317A.

(g) Section 317A.735 regarding the distribution of assets on dissolution applies to a nonprofit limited liability company as if it were a nonprofit corporation governed by chapter 317A.

(h) Section 317A.751 regarding judicial intervention applies to a nonprofit limited liability company as if it were a nonprofit corporation governed by chapter 317A.

Subd. 6. **Notice to and authority of attorney general.** The attorney general has the same authority and powers with regard to a nonprofit limited liability company as the attorney general has with regard to a corporation governed by chapter 317A, including but not limited to sections 317A.811 and 317A.813.

History: *2014 c 157 art 1 s 85; 2015 c 39 s 43*

MISCELLANEOUS PROVISIONS

322C.1201 UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: *2014 c 157 art 1 s 86*

322C.1202 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, United States Code, title 15, section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, United States Code, title 15, section 7003(b).

History: *2014 c 157 art 1 s 87*

322C.1203 SAVINGS CLAUSE.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

History: *2014 c 157 art 1 s 88*

322C.1204 APPLICATION TO EXISTING RELATIONSHIPS.

Subdivision 1. **Before January 1, 2018.** (a) On or after August 1, 2015, a limited liability company may not be formed under chapter 322B.

(b) Before January 1, 2018, this chapter governs only:

(1) a limited liability company formed on or after August 1, 2015; and

(2) except as otherwise provided in subdivision 3, a limited liability company formed before August 1, 2015, which elects, in the manner provided in its operating agreement or bylaw for amending the operating agreement, to be subject to this chapter.

Subd. 2. **On or after January 1, 2018.** Except as otherwise provided in subdivision 3, on and after January 1, 2018, this chapter governs all limited liability companies.

Subd. 3. **Application to existing limited liability company.** For the purposes of applying this chapter to a limited liability company formed before August 1, 2015:

(1) the limited liability company's articles of organization under chapter 322B at the time the limited liability company becomes subject to this chapter are deemed to be the limited liability company's articles of organization;

(2) for the purposes of applying section 322C.0102, subdivision 17, and subject to section 322C.0112, subdivision 4, the language in the articles of organization, and any bylaws, operating agreement, or member control agreement of a limited liability company formed before August 1, 2015, that becomes subject to this chapter will operate as if that language were in the operating agreement of the limited liability company when it becomes subject to this chapter; and

(3) subject to the operating agreement of the limited liability company:

(i) the limited liability company shall keep the records specified in section 322B.373, subdivision 1, clause (11), at the company's principal executive office, or at another place or places within the United States as determined under section 322B.373, subdivision 1, before the company became subject to this chapter;

(ii) for the purpose of applying item (i), section 322B.40, subdivisions 3 and 4, continue to apply to the limited liability company as if those provisions had not been repealed;

(iii) section 322C.0404, subdivision 1, does not apply to the limited liability company;

(iv) the profits and losses of the 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 records required by item (i);

(v) the voting power of each membership interest is in proportion to the value of the contributions of the members reflected in the records required by item (i);

(vi) distributions of cash or other assets of the 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 records required by item (i);

(vii) sections 322B.383, subdivisions 1, clause (1), 2, and 3, and 322B.386 continue to apply to the limited liability company as if those provisions had not been repealed; and

(viii) for the purpose of applying item (vii), section 322B.356, subdivision 1, continues to apply to the limited liability company as if that provision had not been repealed.

History: *2014 c 157 art 1 s 89; 2015 c 39 s 44*

322C.1205 STATE INTERESTED IN PROCEEDING.

If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested in the proceeding or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

History: *2014 c 157 art 1 s 90*