

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [43A.321] VOLUNTEER FIREFIGHTER AND RESCUE WORKERS; AGREEMENTS.

(a) An employee may reach an agreement with the employee's appointing authority to respond to emergency calls as a volunteer emergency fire or rescue worker during working hours, provided that:

(1) the employee does not respond to a call when the employee's sudden absence would endanger others; and

(2) the employee remits to the appointing authority any compensation received for responding to the call.

(b) If such an agreement is entered into:

(1) the appointing authority shall make no deductions from the employee's wages or sick or vacation time for time spent responding to calls; and

(2) workers' compensation liability is the responsibility of the entity for which the emergency services are provided while the employee is responding to the call.

Sec. 2. Minnesota Statutes 1992, section 179A.09, is amended by adding a subdivision to read:

Subd. 3. DIVISION OF UNITS. If a designated appropriate unit contains both peace officers subject to licensure under sections 626.84 to 626.855 and essential employees who are not peace officers, the commissioner, at the request of a majority of either the peace officers or the other essential employees within the unit, shall divide the unit into two separate appropriate units, one for the peace officers and one for the other essential employees.

Presented to the governor May 11, 1993

Signed by the governor May 13, 1993, 2:54 p.m.

CHAPTER 137—S.F.No. 181

An act relating to limited liability companies; clarifying the application of financial institution, workers' compensation, unemployment compensation, taxation, and usury laws; modifying certain powers of, and rules applicable to, limited liability companies and their members and affiliates; amending Minnesota Statutes 1992, sections 48.24, subdivisions 1, 7, and 8; 51A.02, subdivision 43; 176.011, subdivision 10; 176.041, subdivision 1a; 268.04, subdivision 9; 268.161, subdivision 9; 290.92, subdivision 1; 297A.01, subdivision 2; 302A.011, subdivision 25; 302A.161, subdivision 12; 302A.501, subdivision 1; 302A.521, subdivision 1;

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302A.551, subdivision 3; 302A.673, subdivision 1; 319A.02, subdivision 7; 322B.03, subdivision 41, and by adding subdivisions; 322B.115, subdivisions 1 and 2; 322B.20, subdivisions 5, 7, 12, 14, and 21; 322B.30, subdivisions 2 and 3; 322B.306, subdivisions 1, 3, and 4; 322B.31, subdivision 3; 322B.313; 322B.316; 322B.323, subdivision 2; 322B.373, subdivision 1; 322B.54, subdivision 3; 322B.693, subdivision 1; 322B.696; 322B.699, subdivision 1; 322B.77, subdivisions 1 and 3; 322B.80, subdivision 1, and by adding a subdivision; 322B.873; 322B.91, subdivision 1; 322B.92; 322B.93; 322B.935, subdivisions 2 and 3; and 334.021; proposing coding for new law in Minnesota Statutes, chapter 322B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 48.24, subdivision 1, is amended to read:

Subdivision 1. The total liabilities to any such bank, as principal, guarantor or endorser of any individual, including the liabilities of any corporation or limited liability company which the individual owns or controls a majority interest, any partnership, unincorporated association, limited liability company, or corporation, including the liabilities of the several members of a partnership or unincorporated association, and in case of a corporation or limited liability company of all subsidiaries thereof in which such corporation or limited liability company owns or controls a majority interest, shall never exceed 20 percent of its capital actually paid in cash and of its actual surplus fund, except that obligations not to exceed 25 percent of said capital and surplus to any one borrower shall not be included as liabilities for the purposes of this section, but shall be liabilities of the borrowers, provided they are secured by not less than a like amount of any one of the various types of obligations of the United States or which are fully guaranteed as to principal and interest by the United States, and providing that such bonds or obligations have a market value of at least ten percent in excess of the amount loaned thereon at the time each loan is made.

For the purpose of this section the members of a family living together in one household, if borrowed funds are to be used in the conduct of a common enterprise, shall be regarded as one person and the total liabilities of the members of the family shall be limited as herein provided. The endorser or guarantor of any obligation which is exempt from loaning limits according to the provisions of this section shall also be exempt from such loaning limits to the extent of the amount of liability on such obligations for the purposes of this section but shall be liable thereon. Individual extensions of credit which result in liabilities of individuals ~~or~~, corporations, or limited liability companies exceeding the limitations set forth in this section shall be construed to conform to the provisions of this subdivision upon reduction in an amount sufficient to reduce the total liability to not more than the legal amount, but until paid in full shall not exempt the officer or employee of the bank from being personally liable to the bank for the amount of the original excess portion of the loan as set forth in subdivision 8.

Sec. 2. Minnesota Statutes 1992, section 48.24, subdivision 7, is amended to read:

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Subd. 7. Obligations of any person, copartnership, limited liability company, association or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering feeder livestock which is free from all other encumbrances, when the market value of the livestock securing the obligation at the time of the making of the loan is not less than 115 percentum of the face amount of the notes covered by such documents, shall be subject under this subdivision to a limitation of 20 percent of capital and surplus in addition to 20 percent of capital and surplus as included in provisions of subdivision 1. Feeder livestock loans as referred to in this subdivision is defined to include only obligations secured by liens or giving title to cattle, sheep, goats, hogs or poultry being fattened for market, but excluding dairy cattle, milk goats, poultry used for production of eggs, or barnyard or work animals.

Sec. 3. Minnesota Statutes 1992, section 48.24, subdivision 8, is amended to read:

Subd. 8. When a bank shall allow any individual, partnership, limited liability company, unincorporated association, or corporation, or any officer or director of the bank, to become indebted to it, directly or indirectly, in excess of the amount, exclusive of interest permitted by the laws of this state, the officer or employee of the bank willfully permitting or approving the loan shall be guilty of a gross misdemeanor and, in addition thereto, shall be personally liable to the bank for the amount of the loan in excess of the statutory limit.

Sec. 4. Minnesota Statutes 1992, section 51A.02, subdivision 43, is amended to read:

Subd. 43. **ORGANIZATION.** "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, joint venture, cooperative, limited liability company, or association.

Sec. 5. Minnesota Statutes 1992, section 176.011, subdivision 10, is amended to read:

Subd. 10. **EMPLOYER.** "Employer" means any person who employs another to perform a service for hire; and includes corporation, partnership, limited liability company, association, group of persons, state, county, town, city, school district, or governmental subdivision.

Sec. 6. Minnesota Statutes 1992, section 176.041, subdivision 1a, is amended to read:

Subd. 1a. **ELECTION OF COVERAGE.** The persons, partnerships, limited liability companies, and corporations described in this subdivision may elect to provide the insurance coverage required by this chapter.

(a) An owner or owners of a business or farm may elect coverage for themselves.

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(b) A partnership owning a business or farm may elect coverage for any partner.

(c) A family farm corporation as defined in section 500.24, subdivision 2, clause (c), may elect coverage for any executive officer.

(d) A closely held corporation which had less than 22,880 hours of payroll in the previous calendar year may elect coverage for any executive officer if that executive officer is also an owner of at least 25 percent of the stock of the corporation.

(e) A person, partnership, limited liability company, or corporation hiring an independent contractor, as defined by rules adopted by the commissioner, may elect to provide coverage for that independent contractor.

A person, partnership, limited liability company, or corporation may charge the independent contractor a fee for providing the coverage only if the independent contractor (1) elects in writing to be covered, (2) is issued an endorsement setting forth the terms of the coverage, the name of the independent contractors, and the fee and how it is calculated.

The persons, partnerships, and corporations described in this subdivision may also elect coverage for an employee who is a spouse, parent, or child, regardless of age, of an owner, partner, or executive officer, who is eligible for coverage under this subdivision. Coverage may be elected for a spouse, parent, or child whether or not coverage is elected for the related owner, partner, or executive director and whether or not the person, partnership, or corporation employs any other person to perform a service for hire. Any person for whom coverage is elected pursuant to this subdivision shall be included within the meaning of the term employee for the purposes of this chapter.

Notice of election of coverage or of termination of election under this subdivision shall be provided in writing to the insurer. Coverage or termination of coverage is effective the day following receipt of notice by the insurer or at a subsequent date if so indicated in the notice. The insurance policy shall be endorsed to indicate the names of those persons for whom coverage has been elected or terminated under this subdivision. An election of coverage under this subdivision shall continue in effect as long as a policy or renewal policy of the same insurer is in effect.

Nothing in this subdivision shall be construed to limit the responsibilities of owners, partnerships, limited liability companies, or corporations to provide coverage for their employees, if any, as required under this chapter.

Sec. 7. Minnesota Statutes 1992, section 268.04, subdivision 9, is amended to read:

Subd. 9. **EMPLOYING UNIT.** "Employing unit" means any individual or type of organization, including any partnership, limited liability company, asso-

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ciation, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit. Each individual employed to perform or assist in performing the work of any agent or individual employed by an employing unit shall be deemed to be employed by such employing unit whether such individual was hired or paid directly by such employing unit or by such agent or individual, provided the employing unit had actual or constructive knowledge of such work. Any private or nonprofit organization or government agency providing or authorizing the hiring of homeworkers, personal care attendants, or other individuals performing similar services in the private home of an individual is the employing unit of the homemaker, attendant or similar worker whether the agency pays the employee directly or provides funds to the recipient of the services to pay for the services.

Sec. 8. Minnesota Statutes 1992, section 268.161, subdivision 9, is amended to read:

Subd. 9. **PERSONAL LIABILITY.** Any officer, director, or any employee having 20 percent ownership interest of a corporation which is an employer under sections 268.03 to 268.231, and any manager, governor, or member of a limited liability company having 20 percent ownership interest of a limited liability company which is an employer under sections 268.03 to 268.231, who

(1) has control of or supervision over the filing of and responsibility for filing contribution reports or of making payment of contributions under these sections, and ~~who~~

(2) willfully fails to file the reports or to make payments as required, shall be personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the department those amounts for which the employer is liable.

Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets filed therein without reserving a sufficient amount to pay the contributions, interest, and penalties due pursuant to this chapter shall be personally liable for the deficiency.

The personal liability of any person as provided herein shall survive dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this subdivision, all wages paid by the corporation shall be considered earned from the person determined to be personally liable.

An official designated by the commissioner shall make an initial determination as to the personal liability under this section. The determination shall be

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final unless the person found to be personally liable shall within 30 days after mailing of notice of determination to the person's last known address file a written appeal. Proceedings on the appeal shall be conducted in the same manner as an appeal from a determination of employer liability under section 268.12, subdivision 13.

Sec. 9. Minnesota Statutes 1992, section 290.92, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** (1) **WAGES.** For purposes of this section, the term "wages" means the same as that term is defined in section 3401(a) and (f) of the Internal Revenue Code of 1986, as amended through December 31, 1991, except wages shall not include agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, as amended through December 31, 1991.

(2) **PAYROLL PERIOD.** For purposes of this section the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by the employee's employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(3) **EMPLOYEE.** For purposes of this section the term "employee" means any resident individual performing services for an employer, either within or without, or both within and without the state of Minnesota, and every nonresident individual performing services within the state of Minnesota, the performance of which services constitute, establish, and determine the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of a corporation, and an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(4) **EMPLOYER.** For purposes of this section the term "employer" means any person, including individuals, fiduciaries, estates, trusts, partnerships, limited liability companies, and corporations transacting business in or deriving any income from sources within the state of Minnesota for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have legal control of the payment of the wages for such services, the term "employer," except for purposes of paragraph (1), means the person having legal control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any corporation, individual, estate, trust, or organization which is exempt from taxation under section 290.05 and further includes, but is not limited to, officers of corporations who have legal control, either individually or jointly with another or others, of the payment of the wages.

(5) **NUMBER OF WITHHOLDING EXEMPTIONS CLAIMED.** For pur-

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poses of this section, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under subdivision 5, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

Sec. 10. Minnesota Statutes 1992, section 297A.01, subdivision 2, is amended to read:

Subd. 2. "Person" includes any individual, partner, officer, director, firm, partnership, joint venture, limited liability company, association, cooperative, social club, fraternal organization, municipal or private corporation whether organized for profit or not, estate, trusts, business trusts, receiver, trustee, syndicate, the United States, the state of Minnesota, any political subdivision of Minnesota, or any other group or combination acting as a unit, and the plural as well as the singular number. As used in the preceding sentence, the term "person" includes, but is not limited to, directors and officers of corporations, governors and managers of a limited liability company, or members of partnerships who, either individually or jointly with others, have the control, supervision or responsibility of filing returns and making payment of the amount of tax imposed by this chapter. "Person" shall also include any agent or consignee of any individual or organization enumerated in this subdivision.

Sec. 11. Minnesota Statutes 1992, section 302A.011, subdivision 25, is amended to read:

Subd. 25. ~~RELATED CORPORATION ORGANIZATION.~~ RELATED CORPORATION ORGANIZATION. "Related ~~corporation~~ organization" of a specified corporation means:

- (1) a parent or subsidiary of the specified corporation ~~or~~;
- (2) another subsidiary of a parent of the specified corporation;
- (3) a limited liability company owning, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation;
- (4) a limited liability company having more than 50 percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by the specified corporation;
- (5) a limited liability company having more than 50 percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly either (i) by a parent of the specified corporation or (ii) a limited liability company owning, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation; or
- (6) a corporation having more than 50 percent of the voting power of its shares entitled to vote for director owned directly or indirectly by a limited lia-

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bility company owning, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation.

Sec. 12. Minnesota Statutes 1992, section 302A.161, subdivision 12, is amended to read:

Subd. 12. **PENSIONS; BENEFITS.** A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the corporation, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related ~~corporations~~ organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

Sec. 13. Minnesota Statutes 1992, section 302A.501, subdivision 1, is amended to read:

Subdivision 1. **PREREQUISITES.** A corporation 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 by the affirmative vote of a majority of the directors present and:

- (a) Is in the usual and regular course of business of the corporation;
- (b) Is with, or for the benefit of, a related ~~corporation~~ organization, an organization in which the corporation has a financial interest, an organization with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations;
- (c) Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or
- (d) Has been approved by (1) the holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

Sec. 14. Minnesota Statutes 1992, section 302A.521, subdivision 1, is amended to read:

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

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(b) "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation 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 director, the position of director in a corporation, (2) with respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation, and (3) with respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, 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 corporation.

(e) "Special legal counsel" means counsel who has not represented the corporation or a related ~~corporation~~ organization, or a director, officer, member of a committee of the board, or employee, whose indemnification is in issue.

Sec. 15. Minnesota Statutes 1992, section 302A.551, subdivision 3, is amended to read:

Subd. 3. **EFFECT MEASURED.** (a) In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution shall be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.

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

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

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(d) Sections 302A.551 to 302A.559 supersede all other statutes of this state with respect to distributions, and the provisions of sections 513.41 to 513.51 do not apply to distributions made by a corporation governed by this chapter.

Sec. 16. Minnesota Statutes 1992, section 302A.673, subdivision 1, is amended to read:

Subdivision 1. BUSINESS COMBINATION WITH INTERESTED SHAREHOLDER; APPROVAL BY DIRECTORS. (a) Notwithstanding anything to the contrary contained in this chapter (except the provisions of subdivision 3), an issuing public corporation may not engage in any business combination, or vote, consent, or otherwise act to authorize a subsidiary of the issuing public corporation to engage in any business combination, with, with respect to, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with, any interested shareholder of the issuing public corporation or any affiliate or associate of the interested shareholder for a period of four years following the interested shareholder's share acquisition date unless the business combination or the acquisition of shares made by the interested shareholder on the interested shareholder's share acquisition date is approved before the interested shareholder's share acquisition date by a committee of the board of the issuing public corporation formed in accordance with paragraph (d).

(b) If a good faith definitive proposal regarding a business combination is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d) shall consider and take action on the proposal and respond in writing within 30 days after receipt of the proposal by the issuing public corporation, setting forth its decision regarding the proposal.

(c) If a good faith definitive proposal to acquire shares is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d), shall consider and take action on the proposal and respond in writing within 30 days after receipt of the proposal by the issuing public corporation, setting forth its decision regarding the proposal.

(d)(1) When a business combination or acquisition of shares is proposed pursuant to this subdivision, the board shall promptly form a committee composed of all of the board's disinterested directors. The committee shall take action on the proposal by the affirmative vote of a majority of committee members. No larger proportion or number of votes shall be required. Notwithstanding the provisions of section 302A.241, subdivision 1, the committee shall not be subject to any direction or control by the board with respect to the committee's consideration of, or any action concerning, a business combination or acquisition of shares pursuant to this section.

(2) A committee formed pursuant to this subdivision shall be composed of one or more members. Only disinterested directors may be members of a committee formed pursuant to this subdivision. However, if the board has no disin-

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terested directors, the board shall select three or more disinterested persons to be committee members. Committee members are deemed to be directors for purposes of sections 302A.251, 302A.255, and 302A.521.

(3) For purposes of this subdivision, a director or person is "disinterested" if the director or person is neither an officer nor an employee, nor has been an officer or employee within five years preceding the formation of the committee pursuant to this section, of the issuing public corporation, or of a related ~~corporation~~ organization.

Sec. 17. Minnesota Statutes 1992, section 319A.02, subdivision 7, is amended to read:

Subd. 7. "Corporation" as used in this chapter includes a limited liability company organized under chapter 322B and, with respect to a limited liability company, references in this chapter to articles of incorporation, bylaws, directors, officers, ~~directors~~; shareholders and shares of stock shall refer to articles of organization, operating agreement, governors, managers, members and membership interests, respectively.

Sec. 18. Minnesota Statutes 1992, section 322B.03, is amended by adding a subdivision to read:

Subd. 17a. DOMESTIC CORPORATION. "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 302A.

Sec. 19. Minnesota Statutes 1992, section 322B.03, is amended by adding a subdivision to read:

Subd. 19a. FOREIGN CORPORATION. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under chapter 302A.

Sec. 20. Minnesota Statutes 1992, section 322B.03, is amended by adding a subdivision to read:

Subd. 36a. PARENT. "Parent" of a specified limited liability company means a limited liability company or a corporation that directly or indirectly owns more than 50 percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

Sec. 21. Minnesota Statutes 1992, section 322B.03, subdivision 41, is amended to read:

Subd. 41. ~~RELATED LIMITED LIABILITY COMPANY ORGANIZATION.~~ "Related limited liability company organization" of a specified limited liability company means a parent or subsidiary of the specified limited liability company or another subsidiary of a parent of the specified limited liability company.

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Sec. 22. Minnesota Statutes 1992, section 322B.03, is amended by adding a subdivision to read:

Subd. 45a. SUBSIDIARY. "Subsidiary" of a specified limited liability company means a limited liability company or a corporation having more than 50 percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by the specified limited liability company.

Sec. 23. Minnesota Statutes 1992, section 322B.115, subdivision 1, is amended to read:

Subdivision 1. **REQUIRED PROVISIONS.** The articles of organization must contain:

- (1) the name of the limited liability company;
- (2) the address of the registered office of the limited liability company and the name of its registered agent, if any, at that address;
- (3) the name and address of each organizer;
- (4) the limited period of existence for the limited liability company, which must be a period of 30 years or less from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a longer period of duration;
- (5) a statement as to whether upon the occurrence of any event under section 322B.80, subdivision 1, clause (5), that terminates the continued membership of a member in the limited liability company, the remaining members will have the power to avoid dissolution by giving dissolution avoidance consent; and
- (6) a statement as to whether the members have the power to enter into a business continuation agreement.

Sec. 24. Minnesota Statutes 1992, section 322B.115, subdivision 2, is amended to read:

Subd. 2. STATUTORY PROVISIONS THAT MAY BE MODIFIED ONLY IN ARTICLES OF ORGANIZATION. The following provisions govern a limited liability company unless modified in the articles of organization:

- (1) a limited liability company has general business purposes (section 322B.10);
- (2) a limited liability company has certain powers (section 322B.20);
- (3) the power to adopt, amend, or repeal the operating agreement is vested in the board of governors (section 322B.603);
- (4) a limited liability company must allow cumulative voting for governors (section 322B.63);

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(5) the affirmative vote of a majority of governors present is required for an action of the board of governors (section 322B.653);

(6) a written action by the board of governors taken without a meeting must be signed by all governors (section 322B.656);

(7) the board may accept contributions, make contribution agreements, and make contribution allowance agreements (sections 322B.40, subdivision 1; 322B.42; and 322B.43);

(8) all membership interests are ordinary membership interests entitled to vote and are of one class with no series (section 322B.40, subdivision 5, clauses (1) and (2));

(9) all membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors (section 322B.40, subdivision 5, clause (2));

(10) the restatement of value of previous contributions is to be determined according to a specified process (section 322B.41, subdivisions 3 and 4);

(11) a member has certain preemptive rights, unless otherwise provided by the board of governors (section 322B.33);

(12) the affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled to vote (section 322B.35, subdivision 1);

(13) the voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members (section 322B.356);

(14) members share in distributions in proportion to the value reflected in the required records of the contributions of members (section 322B.50);

(15) members share profits and losses in proportion to the value reflected in the required records of the contributions of members (section 322B.326);

(16) a written action by the members taken without a meeting must be signed by all members (section 322B.35);

(17) members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind (section 322B.52); ~~and~~

(18) a member is not subject to expulsion (section 322B.306, subdivision 2);

(19) unanimous consent is required for the transfer of governance rights to a person not already a member (section 322B.313, subdivision 2); and

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(20) unanimous consent is required to avoid dissolution (section 322B.80, subdivision 1, clause (5)(B)).

Sec. 25. Minnesota Statutes 1992, section 322B.20, subdivision 5, is amended to read:

Subd. 5. **PROPERTY DISPOSITION.** A limited liability company may sell, convey, mortgage, create a security interest in, otherwise encumber, assign, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.

Sec. 26. Minnesota Statutes 1992, section 322B.20, subdivision 7, is amended to read:

Subd. 7. **CONTRACTS AND MORTGAGES.** A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or creation of a security interest in or other encumbrance or assignment of all or any of its property, franchises, and income.

Sec. 27. Minnesota Statutes 1992, section 322B.20, subdivision 12, is amended to read:

Subd. 12. **PENSIONS AND BENEFITS.** A limited liability company may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the limited liability company, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related ~~limited liability companies'~~ organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

Sec. 28. Minnesota Statutes 1992, section 322B.20, subdivision 14, is amended to read:

Subd. 14. **INSURANCE.** A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of any or all of its members, managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.

Sec. 29. Minnesota Statutes 1992, section 322B.20, subdivision 21, is amended to read:

Subd. 21. **ADVANCES.** A limited liability company may make advances to members who provide services to the limited liability company, its governors, managers, and employees and those of its subsidiaries as provided in section 322B.696.

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Sec. 30. Minnesota Statutes 1992, section 322B.30, subdivision 2, is amended to read:

Subd. 2. **STATEMENT OF MEMBERSHIP INTEREST.** At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement. The statement must describe the member's rights to vote, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under section 322B.31, subdivision 3, or governance rights under section 322B.313, subdivision 6, then in effect, as well as any assignment of the member's rights then in effect other than a security interest. The statement is not a certificated security as defined in section 336.8-102(1)(a), is not a negotiable instrument, and may not serve as a vehicle by which a transfer of any membership interest may be effected.

Sec. 31. Minnesota Statutes 1992, section 322B.30, subdivision 3, is amended to read:

Subd. 3. **GRANT OF A SECURITY INTEREST.** Notwithstanding any law to the contrary, for the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each a general intangible, as defined in section 336.9-106, and not a certificated security as defined in section 336.8-102(1)(a) and not an uncertificated security as defined in section 336.8-102(1)(b) and not chattel paper as defined in section 336.9-105(1)(b) and not an instrument as defined in section 336.9-105(1)(i) and not an account as defined in section 336.9-106.

Sec. 32. Minnesota Statutes 1992, section 322B.306, subdivision 1, is amended to read:

Subdivision 1. **MEMBER'S POWER TO TERMINATE MEMBERSHIP.** A member always has the power, though not necessarily the right, to terminate its membership by resigning or retiring at any time. A member's resignation or retirement, whether rightful or wrongful, causes dissolution under section 322B.80, subdivision 1, clause (5), unless dissolution ~~avoidance consent is obtained from the remaining members~~ is avoided under that clause. A member has no power to transfer all or part of the member's membership interest, except as provided in sections 322B.31 and 322B.313.

Sec. 33. Minnesota Statutes 1992, section 322B.306, subdivision 3, is amended to read:

Subd. 3. **EFFECT OF TERMINATION OF MEMBERSHIP ON THE GOVERNANCE RIGHTS OF THE TERMINATED MEMBER.** If for any reason the continued membership of a member is terminated:

(1) if dissolution under section 322B.80, subdivision 1, clause (5), is avoided ~~through dissolution avoidance consent under that clause~~, then the member whose membership has terminated loses all governance rights and will be

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considered merely an assignee of the financial rights owned before the termination of membership; and

(2) if dissolution under section 322B.80, subdivision 1, clause (5), is not avoided ~~through dissolution avoidance consent~~ under that clause, the member whose continued membership has terminated retains all governance rights and financial rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.

Sec. 34. Minnesota Statutes 1992, section 322B.306, subdivision 4, is amended to read:

Subd. 4. ADDITIONAL EFFECTS IF TERMINATION OF MEMBERSHIP IS WRONGFUL. If a member resigns or retires in contravention of the articles of organization or a member control agreement then:

(1) if dissolution avoidance consent is obtained, the member who has wrongfully resigned or retired is liable ~~to all the other members and~~ to the limited liability company to the extent damaged by the wrongful resignation or retirement; and

(2) if dissolution avoidance consent is not obtained ~~but the business of the limited liability company is continued under a business continuation agreement, then unless otherwise provided in the business continuation agreement:~~

(i) ~~the member who has wrongfully resigned or retired has the right as against the successor organization to have the value of the resigned or retired membership interest determined and paid in cash; but~~

(ii) ~~in ascertaining the value of the resigned or retired membership interest, the value of the goodwill of the business must not be considered, section 322B.873 applies.~~

Sec. 35. Minnesota Statutes 1992, section 322B.31, subdivision 3, is amended to read:

Subd. 3. RESTRICTIONS OF ASSIGNMENT OF FINANCIAL RIGHTS. (a) A restriction on the assignment of financial rights may be imposed in the articles, in the operating agreement, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the limited liability company. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.

(b) Subject to paragraph (c), a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, includ-

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ing a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

(c) With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the limited liability company under section 322B.30. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.

(d) Notwithstanding any provision of law, articles of organization, member control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with chapter 336, without the consent or approval of the member whose financial rights are subject to the security interest.

Sec. 36. Minnesota Statutes 1992, section 322B.313, is amended to read:

322B.313 ASSIGNMENT OF A COMPLETE MEMBERSHIP INTEREST AND OF GOVERNANCE RIGHTS COUPLED WITH AN ASSIGNMENT OF FINANCIAL RIGHTS.

Subdivision 1. TRANSFER OF MEMBERSHIP INTERESTS GOVERNANCE RIGHTS RESTRICTED. A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with a simultaneous assignment to the same assignee of all the member's financial rights. A member's governance rights are assignable, in whole or in part, only as provided in this section.

Subd. 2. WHEN UNANIMOUS CONSENT REQUIRED. Subject to subdivision 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent, unless the articles of organization provide for written consent by fewer than all members. Subject to subdivision 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by this subdivision. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by this subdivision. If a secured party has a security interest in both a member's financial rights and governance rights, including a security interest in a complete membership interest, this subdivision's requirement that the secured party obtain consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.

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Subd. 3. **EFFECT ON MEMBERSHIP.** When an assignment of governance rights ~~coupled with financial rights~~ is effective under subdivision 2:

(1) if the assignment is not a security interest, the assignee becomes a member, if not already a member; and

(2) if the assignor does not retain any governance rights, the assignor ceases to be a member; and the ~~unanimous~~ written consent required under subdivision 2; ~~clause (2)~~; also constitutes the dissolution avoidance consent necessary to avoid dissolution that would otherwise ensue under section 322B.80, subdivision 1, clause (5), on account of the assignor ceasing to be a member if the consent required to avoid dissolution is not greater than the consent required under subdivision 2.

Subd. 4. **EFFECT ON LIABILITY FOR CONTRIBUTIONS AND ILLEGAL DISTRIBUTIONS.** When an assignment other than a security interest is effective under subdivision 2, unless the written consent under subdivision 2 otherwise provides:

(1) the assignee is liable ~~for any~~ in proportion to the interest assigned for the obligations of the assignor under sections 322B.40 (including liability for unperformed promises that have been reflected as contributions in the required records) and 322B.55 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and

(2) the assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 322B.40 and 322B.55.

Subd. 5. **CONSEQUENCES OF INEFFECTIVE ASSIGNMENT.** If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subdivision 2:

(1) the purported or attempted assignment is ineffective in its entirety; and

(2) any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.

Subd. 6. **RESTRICTIONS ON ASSIGNMENT OF GOVERNANCE RIGHTS.** Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in section 322B.31, subdivision 3, for restricting the transfer of financial rights.

Subd. 7. FORECLOSURE OF SECURITY INTEREST. Notwithstanding any provision of law, articles of organization, member control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with chapter

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336, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

Sec. 37. Minnesota Statutes 1992, section 322B.316, is amended to read:

322B.316 EFFECTIVE DATE OF ASSIGNMENTS.

Any permissible and otherwise valid assignment of financial rights under section 322B.31 ~~and or~~ of governance rights ~~coupled with financial rights or a complete membership interest~~ under section 322B.313 will be effective as to and binding on the limited liability company only when the assignee's name, address, and the nature and extent of the assignment are reflected in the required records of the limited liability company, except that a permissible and otherwise valid security interest in a complete membership interest, financial rights, or governance rights will be effective as to and binding on the limited liability company as provided in chapter 336 whether or not the information about the secured party or the permissible and otherwise valid security interest is reflected in the required records of the limited liability company.

Sec. 38. Minnesota Statutes 1992, section 322B.323, subdivision 2, is amended to read:

Subd. 2. **WHEN MEMBERSHIP IS TERMINATED.** If an event referred to in subdivision 1 causes the termination of a member's membership interest ~~and the remaining members give dissolution avoidance consent is avoided under section 322B.80, subdivision 1, clause (5),~~ then:

(1) as provided in section 322B.306, subdivision 3, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and

(2) the rights to be exercised by the legal representative of the terminated member will be limited accordingly.

Sec. 39. Minnesota Statutes 1992, section 322B.373, subdivision 1, is amended to read:

Subdivision 1. **REQUIRED RECORDS.** A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board of governors:

(1) a current list of the full name and last-known business, residence, or mailing address of each member, governor, and chief manager;

(2) a current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights other than a secured party, and a description of the rights assigned;

(3) a copy of the articles of organization and all amendments to the articles;

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- (4) copies of any currently effective written operating agreement;
- (5) copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (6) financial statements required by section 322B.376;
- (7) records of all proceedings of members for the last three years;
- (8) records of all proceedings of the board of governors for the last three years;
- (9) reports made to members generally within the last three years;
- (10) member control agreements described in section 322B.37;
- (11) a statement of all contributions accepted under section 322B.40, subdivision 3, including for each contribution:
 - (i) the identity of the member to whom the contribution relates;
 - (ii) the class or series to which the contribution pertains;
 - (iii) the amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;
 - (iv) a description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and
 - (v) the value accorded under section 322B.40, subdivision 4 to:
 - (A) any other property transferred or promised to be transferred to the limited liability company; and
 - (B) any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;
- (12) a statement of all contribution agreements made under section 322B.42, including for each contribution agreement:
 - (i) the identity of the would-be contributor;
 - (ii) the class or series to which the future contribution pertains; and
 - (iii) as to each future contribution to be made, the same information as subdivision 1, clause (11) requires for contributions already accepted;
- (13) a statement of all contribution allowance agreements made under section 322B.43, including for each contribution allowance agreement:

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- (i) the identity of the would-be contributor;
 - (ii) the class or series to which the future contribution would pertain; and
 - (iii) as to each future contribution allowed to be made, the same information as subdivision 1, clause (11) requires for contributions already accepted;
- (14) an explanation of any restatement of value made under section 322B.41;
- (15) any written consents obtained from members under this chapter;
- (16) a copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under section 322B.40, subdivision 6.

Sec. 40. Minnesota Statutes 1992, section 322B.54, subdivision 3, is amended to read:

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

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

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

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

Sec. 41. Minnesota Statutes 1992, section 322B.693, subdivision 1, is amended to read:

Subdivision 1. **PREREQUISITES.** 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

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transaction belongs, is approved by the affirmative vote of a majority of the governors present 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 ~~limited liability company 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;

(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) has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons, or the unanimous affirmative vote of all members, whether or not ordinarily entitled to vote.

Sec. 42. Minnesota Statutes 1992, section 322B.696, is amended to read:

322B.696 ADVANCES.

A limited liability company may, without a vote of the governors or its members, advance money to its members who provide services, governors, managers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

Sec. 43. Minnesota Statutes 1992, section 322B.699, subdivision 1, is amended to read:

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 governor, the position of governor in a limited liability company, (2) with respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of governors, ~~or~~ 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 ser-

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vices 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 represented the limited liability company or a related ~~limited liability company~~ organization, or a governor, manager, member of a committee of the board of governors, or employee, whose indemnification is in issue.

Sec. 44. Minnesota Statutes 1992, section 322B.77, subdivision 1, is amended to read:

Subdivision 1. **MEMBER APPROVAL AND WHEN NOT REQUIRED.** A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a mortgage of or security interest in and otherwise encumber and assign for purposes of security all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, in which case no member approval is required.

Sec. 45. Minnesota Statutes 1992, section 322B.77, subdivision 3, is amended to read:

Subd. 3. **SIGNING OF DOCUMENTS.** Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current managers or authorized agents or, if the limited liability company no longer exists, by its last managers.

Sec. 46. Minnesota Statutes 1992, section 322B.80, subdivision 1, is amended to read:

Subdivision 1. **DISSOLUTION EVENTS.** A limited liability company dissolves upon the occurrence of any of the following events:

(1) when the period fixed in the articles of organization for the duration of the limited liability company expires;

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- (2) by order of a court pursuant to sections 322B.833 and 322B.843;
- (3) by action of the organizers pursuant to section 322B.803;
- (4) by action of the members pursuant to section 322B.806; or
- (5) upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:
 - (i) death of any member;
 - (ii) retirement of any member;
 - (iii) resignation of any member;
 - (iv) redemption of a member's complete membership interest;
 - (v) assignment of a member's governance rights under section 322B.313 which leaves the assignor with no governance rights;
 - (vi) a buy-out of a member's membership interest under section 322B.833 that leaves that member with no governance rights;
 - (vii) expulsion of any member;
 - (viii) bankruptcy of any member;
 - (ix) dissolution of any member;
 - (x) a merger in which the limited liability company is not the surviving organization;
 - (xi) an exchange in which the limited liability company is not the acquiring organization; or
 - (xii) the occurrence of any other event that terminates the continued membership of a member in the limited liability company,

but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if (A) either there are at least two remaining members or a new member is admitted as provided in section 322B.11, and (B) the existence and business of the limited liability company is continued either by the consent of all the remaining members under a right to ~~de se~~ consent stated in the articles of organization and the consent is obtained no later than 90 days after the termination of the continued membership or under a separate right to continue stated in the articles of organization.

Sec. 47. Minnesota Statutes 1992, section 322B.80, is amended by adding a subdivision to read:

Subd. 3. SECURITY INTERESTS. Notwithstanding any provision of law,

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articles of organization, member control agreement, operating agreement, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights, or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights, or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with chapter 336.

Sec. 48. Minnesota Statutes 1992, section 322B.873, is amended to read:

322B.873 DISPOSITION OF ASSETS UPON DISSOLUTION.

Subdivision 1. **DISPOSITION UPON LIQUIDATION.** Subject to subdivision 4, except when the business of a dissolved limited liability company is being continued under subdivision 2 or when the dissolved limited liability company is being wound up and terminated under section 322B.81, subdivision 3, the assets of the dissolved limited liability company must be disposed of to satisfying liabilities according to the following priorities:

(1) to creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 322B.51 or termination distributions under section 322B.50;

(2) unless otherwise provided in the articles of organization, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 322B.50 or 322B.51; and

(3) unless otherwise provided in the articles of organization, to members first for a return of their contributions, as restated from time to time under section 322B.41, and secondly respecting their membership interests in the proportions in which the members share in distributions.

~~A limited liability company may offset any amount due a member under this subdivision by any amount owed to the limited liability company by the member and by the amount of damages, if any, suffered by the limited liability company as a result of that member's breach of a member control agreement.~~

Subd. 2. **DISPOSITION UNDER A BUSINESS CONTINUATION AGREEMENT.** If a business continuation agreement exists, then after dissolution the board of governors shall resolve to implement the business continuation agreement and the assets of the dissolved limited liability company shall be disposed of according to that agreement, except:

(1) members and former members shall have dissenters' rights as provided in sections 322B.383 and 322B.386, but:

(i) no dissenters' rights shall exist if the business of the dissolved limited liability company is being continued pursuant to a business continuation agreement made after the dissolution, and

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(ii) any dissenters' rights that do exist are limited by ~~subdivision~~ subdivisions 3 and 4; and

(2) if the business of the dissolved limited liability company is being continued, but not through a merger under section 322B.81, subdivision 3, the dissolved limited liability company shall comply with either section 322B.816 or 322B.82.

Subd. 3. **LIMITATIONS ON DISSENTERS' RIGHTS.** If a person has agreed in a business continuation agreement to waive dissenters' rights and nonetheless asserts dissenters' rights under subdivision 2:

(1) those rights must be honored; but

(2) unless the business continuation agreement provides otherwise, including providing for installment payments:

(i) in determining the fair value of the membership interest, the value of the good will of the business of the dissolved limited liability company must not be considered; and

(ii) the payment due the dissenter is subject to an offset equal to:

(A) any amount owed to the limited liability company by the member;

(B) the amount of damages, if any, suffered by the limited liability company as a result of the dissenter's breach of the business continuation agreement; and

(C) the amount of other damages, if any, suffered by the limited liability company as a result of any breach by the dissenter of any other member control agreement or part of a member control agreement provided for in subdivision 4.

Subd. 4. **DAMAGES AND OFFSETS FOR WRONGFUL DISSOCIATION AND BREACH OF A MEMBER CONTROL AGREEMENT.** A member who wrongfully resigns or retires is liable to the limited liability company for any damages caused by the member's wrongful resignation or retirement. Any member who breaches a member control agreement is liable to the limited liability company for any damages caused by the breach. Any payment due a member under this section, including payments to dissenters due to winding up merger under section 322B.81, subdivision 3, is subject to offset these damages.

Sec. 49. [322B.901] **FOREIGN LIMITED LIABILITY PARTNERSHIPS CONSIDERED FOREIGN LIMITED LIABILITY COMPANIES.**

For the purposes of sections 322B.90 to 322B.955, the term "foreign limited liability company" includes a foreign limited liability partnership organized for profit that is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability company may be organized under this chapter or for which a professional limited liability company may be organized under chapter 319A.

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Sec. 50. Minnesota Statutes 1992, section 322B.91, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION INFORMATION.** Before transacting business in this state, a foreign limited liability company shall obtain a certificate of authority. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign limited liability company is organized and an application executed by an authorized person and setting forth:

- (1) the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;
- (2) the jurisdiction of its organization;
- (3) the name and business address of the proposed registered agent in this state, which agent shall be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state; ~~and~~
- (4) the address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal place of business of the foreign limited liability company; and
- (5) the date the foreign limited liability company expires in the jurisdiction of its organization.

Sec. 51. Minnesota Statutes 1992, section 322B.92, is amended to read:

322B.92 AMENDMENTS TO THE CERTIFICATE OF AUTHORITY.

If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, ~~including but not limited to a change in the name or address of the registered agent required to be maintained by section 322B.925, the foreign limited liability company shall promptly file with the secretary of state an amendment to the certificate of authority, executed by an authorized person correcting the statement;~~

- (1) in the case of a change in its name, a termination or a merger, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized; or
- (2) in the case of a change in the name or address of the registered agent required to be maintained by section 322B.925, an amendment to the certificate of authority signed by an authorized person.

Sec. 52. Minnesota Statutes 1992, section 322B.93, is amended to read:

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322B.93 CERTIFICATE OF WITHDRAWAL.

A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, which must set forth:

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

(2) that the limited liability company is not transacting business in this state;

(3) that the limited liability company surrenders its authority to transact business in this state;

(4) that the limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the limited liability company was authorized to transact business in this state may be made on the limited liability company by service upon the secretary of state; and

(5) a post office address to which a person may mail a copy of any process against the limited liability company.

The filing with the secretary of state of a certificate of termination or a certificate of merger if the limited liability company is not the surviving organization from the proper officer of the state or country under the laws of which the limited liability company is organized constitutes a valid application of withdrawal and the authority of the limited liability company to transact business in this state shall cease upon filing of the certificate.

Sec. 53. Minnesota Statutes 1992, section 322B.935, subdivision 2, is amended to read:

Subd. 2. **REVOCAION NOTICE.** No certificate of authority of a foreign limited liability company shall be revoked by the secretary of state unless:

(1) the secretary has given the foreign limited liability company not less than 60 days' notice by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the office ~~required to be maintained pursuant to section 322B.13~~ address in the jurisdiction of organization; and

(2) during the 60-day period, the foreign limited liability company has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 54. Minnesota Statutes 1992, section 322B.935, subdivision 3, is amended to read:

Subd. 3. **EFFECTIVE DATE.** Upon the expiration of 60 days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a certificate of revocation and shall mail the certificate to the address of the principal executive place of business or the office required to be maintained in the jurisdiction of organization of the foreign limited liability company.

Sec. 55. Minnesota Statutes 1992, section 334.021, is amended to read:

334.021 CORPORATION PROHIBITED FROM INTERPOSING DEFENSE OF USURY.

No corporation shall hereafter interpose the defense of usury in any action. The term "corporation," as used in this section, includes any cooperative corporation, cooperative association, limited liability company, or limited partnership, and further includes any association or joint stock company having any of the powers and privileges of corporations not possessed by an individual or a partnership.

Sec. 56. **EFFECTIVE DATE.**

Sections 1 to 55 are effective retroactive to January 1, 1993.

Presented to the governor May 11, 1993

Signed by the governor May 13, 1993, 2:59 p.m.

CHAPTER 138—H.F.No. 1408

An act relating to agriculture; redefining terms in the plant pest act; exempting certain nonprofit organizations from the requirement for a nursery stock dealer certificate; amending Minnesota Statutes 1992, section 18.46, subdivision 3, and by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 18.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 18.46, subdivision 3, is amended to read:

Subd. 3. Nursery stock: Nursery stock includes: all hardy deciduous and evergreen trees, shrubs, vines, and other plants having a persistent woody stem; ~~all hardy herbaceous perennials~~, whether wild or cultivated, and parts of ~~either of these~~ thereof which are for and capable of propagation.

New language is indicated by underline, deletions by ~~strikeout~~.