

CHAPTER 361—H.F.No. 1704

An act relating to commerce; making various technical and conforming changes related to limited liability companies; regulating investment securities; amending Minnesota Statutes 1994, sections 322B.105; 322B.115, subdivisions 2, 3, and 4; 322B.125, subdivision 1; 322B.135, subdivision 3; 322B.145; 322B.15, subdivisions 1, 3, and 4; 322B.155; 322B.175; 322B.20, subdivision 2; 322B.30, subdivision 3; 322B.313, subdivision 2; 322B.33, subdivisions 4 and 9; 322B.34, subdivisions 1 and 3; 322B.346, subdivision 2; 322B.36, subdivisions 2 and 3; 322B.363, subdivision 1; 322B.373, subdivision 2; 322B.376; 322B.383, subdivision 1; 322B.386, subdivisions 4 and 7; 322B.40, subdivision 6; 322B.42, subdivisions 2 and 4; 322B.54, subdivision 1; 322B.56, subdivision 1; 322B.60, subdivision 2; 322B.643, subdivision 3; 322B.646; 322B.653; 322B.666, subdivision 2; 322B.693, subdivision 1; 322B.699, subdivision 6; 322B.72, subdivisions 2 and 3; 322B.75, subdivision 1; 322B.77, subdivision 1; 322B.803, subdivisions 1 and 2; 322B.813, subdivision 5; 322B.833, subdivisions 1, 2, and 4; 323.14, subdivision 4; Minnesota Statutes 1995 Supplement, sections 322B.12, subdivision 1; 336.8-103; and 336.8-603.

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

Section 1. Minnesota Statutes 1994, section 322B.105, is amended to read:

322B.105 ORGANIZERS.

One or more natural persons of full at least 18 years of age may act as organizers of a limited liability company by filing with the secretary of state articles of organization for the limited liability company.

Sec. 2. Minnesota Statutes 1994, 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 or a member control agreement under section 322B.37:

- (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);
- (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));

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(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);

(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

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

Sec. 3. Minnesota Statutes 1994, section 322B.115, subdivision 3, is amended to read:

Subd. 3. STATUTORY PROVISIONS THAT MAY BE MODIFIED EITHER IN ARTICLES OF ORGANIZATION OR IN THE OPERATING AGREEMENT. The following provisions govern a limited liability company unless modified either in the articles of organization, a member control agreement under section 322B.37 or in the operating agreement:

(1) governors serve for an indefinite term that expires at the next regular meeting of members (section 322B.616);

(2) the compensation of governors is fixed by the board of governors (section 322B.623);

(3) a certain method must be used for removal of governors (section 322B.636);

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(4) a certain method must be used for filling board of governor vacancies (section 322B.64);

(5) if the board of governors fails to select a place for a board meeting, it must be held at the principal executive office (section 322B.643, subdivision 1);

(6) a governor may call a board of governors meeting, and the notice of the a board of governors meeting need not state the purpose of the meeting (section 322B.643, subdivision 3);

(7) a majority of the board of governors is a quorum for a board meeting (section 322B.65);

(8) a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present (section 322B.66, subdivision 2);

(9) the board may establish a special litigation committee (section 322B.66);

(10) the chief manager and treasurer have specified duties, until the board of governors determines otherwise (section 322B.673);

(11) managers may delegate some or all of their duties and powers, if not prohibited by the board of governors from doing so (section 322B.689);

(12) regular meetings of members need not be held, unless demanded by a member under certain conditions (section 322B.333);

(13) in all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members (section 322B.34, subdivision 2);

(14) for a quorum at a members' meeting there is required a majority of the voting power of the membership interests entitled to vote at the meeting (section 322B.353);

(15) the board of governors may fix a date up to 60 days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting (section 322B.356, subdivision 1);

(16) indemnification of certain persons is required (section 322B.699);

(17) the board of governors may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement (section 322B.54, subdivision 1); and

(18) members have no right to interim distributions except as provided through the operating agreement or an act of the board of governors (section 322B.51).

Sec. 4. Minnesota Statutes 1994, section 322B.115, subdivision 4, is amended to read:

Subd. 4. **OPTIONAL PROVISIONS AND SPECIFIC SUBJECTS.** The following provisions relating to the management of the business or the regulation of the affairs of a limited liability company may be included either in the articles of organization, a member control agreement under section 322B.37 or, except for naming persons to serve as the first board of governors, fixing a greater than majority governor or member vote,

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establishing the rights and priorities for distributions and the rights to share in profits and losses, or giving or prescribing the manner of giving voting rights to persons other than members otherwise than pursuant to the articles of organization, or eliminating or limiting a governor's personal liability, in the operating agreement:

(1) the persons to serve as the first board of governors may be named in the articles of organization (section 322B.606, subdivision 1);

(2) a manner for increasing or decreasing the number of governors may be provided (section 322B.61);

(3) additional qualifications for governors may be imposed (section 322B.613);

(4) governors may be classified (section 322B.626);

(5) the day or date, time, and place of board of governors meetings may be fixed (section 322B.643, subdivision 1);

(6) absent governors may be permitted to give written consent or opposition to a proposal (section 322B.646);

(7) a larger than majority vote may be required for board of governor action (section 322B.653);

(8) authority to sign and deliver certain documents may be delegated to a manager or agent of the limited liability company other than the chief manager (section 322B.673, subdivision 2);

(9) additional managers may be designated (section 322B.676);

(10) additional powers, rights, duties, and responsibilities may be given to managers (section ~~322B.679~~ 322B.676);

(11) a method for filling vacant offices may be specified (section 322B.686, subdivision 3);

(12) the day or date, time, and place of regular member meetings may be fixed (section 322B.333, subdivision 3);

(13) certain persons may be authorized to call special meetings of members (section 322B.336, subdivision 1);

(14) notices of member meetings may be required to contain certain information (section 322B.34, subdivision 3);

(15) a larger than majority vote may be required for member action (section 322B.346);

(16) voting rights may be granted in or pursuant to the articles of organization to persons who are not members (section 322B.356, subdivision 3);

(17) limited liability company actions giving rise to dissenter rights may be designated (section 322B.386, subdivision 1, paragraph (e)); and

(18) a governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles (section 322B.663, subdivision 4).

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Sec. 5. Minnesota Statutes 1995 Supplement, section 322B.12, subdivision 1, is amended to read:

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 an organization formed pursuant to section 319A.03, must meet the requirements of section 319A.07 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 legal business purpose; and

(5) be distinguishable upon the records in the office of the secretary of state from the name of a each domestic limited liability company, limited liability partnership, corporation, ~~or and~~ limited partnership, whether profit or nonprofit, ~~or a~~ and each foreign limited liability company, limited liability partnership, corporation, ~~or and~~ limited partnership authorized or registered to do business in this state, whether profit or nonprofit, ~~or a~~ and each name the right to which is, at the time of organization, reserved ~~or as provided for in~~ sections 302A.117, 317A.117, 322A.03, 322B.125, 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 limited liability company, corporation, or 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, and that the limited liability company, corporation, or limited partnership or holder has not during the three-year period filed any document with the secretary of state; that the applicant has mailed written notice to the limited liability company, corporation, or 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 limited liability company or corporation or in care of the agent of the limited partnership, or the address of the holder of a name filed or registered with the secretary of

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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 limited liability company, corporation, or 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 limited liability company, corporation, or limited partnership with the name that is not distinguishable in the county in which is located the registered office of the limited liability company or corporation, or 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 limited liability company, corporation, or 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.

Sec. 6. Minnesota Statutes 1994, section 322B.125, subdivision 1, is amended to read:

Subdivision 1. **WHO MAY RESERVE.** The exclusive right to the use of a limited liability company name otherwise permitted by section 322B.12 may be reserved by:

- (1) a person doing business in this state under that name;
- (2) a person intending to organize under this chapter;
- (3) a domestic limited liability company intending to change its name;
- (4) a foreign limited liability company intending to make application for a certificate of authority to transact business in this state;
- (5) a foreign limited liability company authorized to transact business in this state and intending to change its name;
- (6) a person intending to organize a foreign limited liability company and intending to have the foreign limited liability company make application for a certificate of authority to transact business in this state; or
- (7) a foreign limited liability company doing business under that name or a name deceptively similar to not distinguishable from that name in one or more states other than this state and not described in clause (4), (5), or (6).

Sec. 7. Minnesota Statutes 1994, section 322B.135, subdivision 3, is amended to read:

Subd. 3. **CHANGE OF BUSINESS ADDRESS OR NAME OF AGENT.** If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each limited liability company represented by that agent by filing with the secretary of state a statement as required in subdivision 1, except that it need be signed only by the registered agent, need not be responsive to clause ~~(3)~~ or (6), and must state that a copy of the statement has been mailed to each of those limited liability companies or to the legal representative of each of those limited liability companies.

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Sec. 8. Minnesota Statutes 1994, section 322B.145, is amended to read:

322B.145 PROCEDURE FOR AMENDMENT BEFORE CONTRIBUTION.

Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended pursuant to section 322B.60 by the organizers or by the board of governors. The articles of organization may also be amended by the board of governors to change or cancel a statement pursuant to section 322B.40, subdivision 6, establishing or fixing the rights and preferences of a class or series of membership interests before any contribution pertaining to that class or series is reflected in the required records of the limited liability company by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state.

Sec. 9. Minnesota Statutes 1994, section 322B.15, subdivision 1, is amended to read:

Subdivision 1. **MANNER OF AMENDMENT.** Except as otherwise set forth in section 322B.145, after any contribution has been reflected in the required records of a limited liability company, the articles of organization may be amended in the manner set forth in this section.

Sec. 10. Minnesota Statutes 1994, section 322B.15, subdivision 3, is amended to read:

Subd. 3. **NOTICE.** Written notice of the members' meeting setting forth the substance of the proposed amendment must be given to each member entitled to vote in the manner provided in section 322B.34 for the giving of notice of meetings of members.

Sec. 11. Minnesota Statutes 1994, section 322B.15, subdivision 4, is amended to read:

Subd. 4. **APPROVAL BY MEMBERS.** (a) The proposed amendment is adopted when approved by the affirmative vote of the owners of a majority of the voting power of the members present and entitled to vote members required by section 322B.346, except as provided in paragraphs (b) and (c), and subdivision 5.

(b) For a closely held limited liability company, if the articles of organization provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles of organization is the larger of:

(1) the specified proportion or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

(2) the specified proportion that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

(c) For limited liability companies other than closely held limited liability companies, if the articles provide for a larger proportion to transact a specified type of business at a meeting, the affirmative vote of that larger proportion is necessary to amend the articles to decrease the proportion necessary to transact the business.

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Sec. 12. Minnesota Statutes 1994, section 322B.155, is amended to read:

322B.155 CLASS OR SERIES VOTING ON AMENDMENTS.

The owners of the outstanding membership interests of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote on the amendment by the provisions of the articles of organization, if the amendment would:

- (1) effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series;
- (2) effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;
- (3) change the rights or preferences of the membership interests of the class or series;
- (4) change the membership interests of the class or series into the same or a different number of membership interests of ~~the same~~ or another class or series;
- (5) create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;
- (6) divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board of governors to do so;
- (7) limit or deny any existing preemptive rights of the membership interests of the class or series; or
- (8) cancel or otherwise affect distributions on the membership interests of the class or series.

Sec. 13. Minnesota Statutes 1994, section 322B.175, is amended to read:

322B.175 EFFECTIVE DATE OF ARTICLES OF ORGANIZATION.

Articles of organization are effective and limited liability company existence begins when the articles of organization are filed with the secretary of state accompanied by a payment of \$135, which includes a \$100 organization fee in addition to the \$35 filing fee required by section 322B.03, subdivision 18. Articles of amendment ~~and articles of merger~~ are effective when filed with the secretary of state or at another time within 30 days after filing if the articles of amendment so provide. Articles of merger must be accompanied by a fee of \$60, which includes a \$25 merger fee in addition to the \$35 filing fee required by section 322B.03, subdivision 18.

Sec. 14. Minnesota Statutes 1994, section 322B.20, subdivision 2, is amended to read:

Subd. 2. **DURATION.** A limited liability company has a limited duration of 30 years from the date the articles of organization are filed with the secretary of state, unless the articles of organization state a shorter or longer period of duration.

Sec. 15. Minnesota Statutes 1994, section 322B.30, subdivision 3, is amended to read:

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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 to be characterized as provided in section 336.8-103, paragraph (c).~~

Sec. 16. Minnesota Statutes 1994, section 322B.313, subdivision 2, is amended to read:

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. Except as otherwise set forth in the articles of organization, 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.

Sec. 17. Minnesota Statutes 1994, section 322B.33, subdivision 4, is amended to read:

Subd. 4. **EXEMPTIONS.** Unless otherwise provided in the articles of organization, no preemptive rights according to this section arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:

(1) to be made in a form other than money;

(2) to be made or reflected pursuant to a plan of merger or exchange;

(3) to be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;

(4) to be made pursuant to a previously made contribution allowance agreement; or

(5) to be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

Sec. 18. Minnesota Statutes 1994, section 322B.33, subdivision 9, is amended to read:

Subd. 9. **MODIFICATION.** If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of

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organization that has the effect of denying, limiting, or modifying the preemptive rights provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

Sec. 19. Minnesota Statutes 1994, section 322B.34, subdivision 1, is amended to read:

Subdivision 1. **TO WHOM GIVEN.** Except as otherwise provided in this chapter, notice of all meetings of members must be given to every owner of membership interests entitled to vote, unless:

(1) the meeting is an adjourned meeting to be held not more than 120 days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or

(2) the following have been mailed by first class mail to a member at the address in the limited liability company records and returned undeliverable:

(i) two consecutive annual meeting notices and notice of any special meetings held during the period between the two annual meetings; and

(ii) all payment of distributions sent during a 12-month period, provided there are at least two sent during a the 12-month period.

If notice of an adjourned meeting is required under clause (1), then the date for determination of members entitled to notice of, and entitled to vote at, the adjourned meeting must comply with section 322B.356, subdivision 1, except that if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.

An action or meeting that is taken or held without notice under clause (2) has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the limited liability company, the notice requirement is reinstated.

Sec. 20. Minnesota Statutes 1994, section 322B.34, subdivision 3, is amended to read:

Subd. 3. **CONTENTS.** The notice must contain the date, time, and place of the meeting, the information with respect to dissenters' rights required by section 322B.386, subdivision 2, if applicable, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles of organization or operating agreement or considered necessary or desirable by the board of governors or by any other person or persons calling the meeting.

Sec. 21. Minnesota Statutes 1994, section 322B.346, subdivision 2, is amended to read:

Subd. 2. **VOTING BY CLASS OR SERIES.** In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, the operating agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same propor-

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tion of the membership interests present of that class or series, or of the total outstanding membership interests of that class or series, as the proportion required pursuant to subdivision 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or operating agreement in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 322B.353.

Sec. 22. Minnesota Statutes 1994, section 322B.36, subdivision 2, is amended to read:

Subd. 2. **MEMBERSHIP INTERESTS HELD BY SUBSIDIARY.** Except as provided in subdivision 3, membership interests of a limited liability company reflected in the required records as being owned by a subsidiary are not entitled to ~~vote~~ be voted on any matter.

Sec. 23. Minnesota Statutes 1994, section 322B.36, subdivision 3, is amended to read:

Subd. 3. **MEMBERSHIP INTERESTS CONTROLLED IN A FIDUCIARY CAPACITY.** Membership interests of a limited liability company in the name of, or under the control of, the limited liability company or a subsidiary in a fiduciary capacity are not entitled to ~~vote~~ be voted on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to vote or gives the limited liability company or, with respect to membership interests in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the membership interests.

Sec. 24. Minnesota Statutes 1994, section 322B.363, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** A member may cast or authorize the casting of a vote by filing a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission. The telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined, provided that the limited liability company has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the member. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or otherwise authorized by any one of them, unless the limited liability company receives from any one of those members written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

Sec. 25. Minnesota Statutes 1994, section 322B.373, subdivision 2, is amended to read:

Subd. 2. **RIGHT TO INSPECT.** (a) A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal repre-

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sentative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all documents referred to in subdivision 1.

(b) A member of a limited liability company has a right, upon written demand, to examine and copy, in person or by a legal representative, other limited liability company records at any reasonable time only if the member demonstrates a proper purpose for the examination.

(c) For purposes of this section, a "proper purpose" is one reasonably related to the person's interest as a member of the limited liability company.

Sec. 26. Minnesota Statutes 1994, section 322B.376, is amended to read:

322B.376 FINANCIAL STATEMENTS.

(a) A limited liability company shall, upon written request by a member, furnish annual financial statements, including prepare annual financial statements within 180 days after the close of the limited liability company's fiscal year. The financial statements must include at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, prepared on the basis of accounting methods reasonable in the circumstances. The financial statements may be consolidated statements of the limited liability company and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy must be accompanied by a statement of the treasurer or other person in charge of the limited liability company's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

(b) Upon written request by a member, a limited liability company shall furnish its most recent annual financial statements as required under paragraph (a) no later than ten business days after receipt of a member's written request. "Furnish" for purposes of this paragraph means that the limited liability company shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting member.

Sec. 27. Minnesota Statutes 1994, section 322B.383, subdivision 1, is amended to read:

Subdivision 1. **ACTIONS CREATING DISSENTERS' RIGHTS.** Subject to a member control agreement under section 322B.37, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:

(1) an amendment of the articles of organization that materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

(i) alters or abolishes a preferential right of the membership interests;

(ii) creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;

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(iii) alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

(iv) excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

(v) changes a member's right to resign or retire;

(vi) establishes or changes the conditions for or consequences of expulsion;

(vii) changes the statement required under section 322B.115, subdivision 1, clause (5);

(viii) changes the statement required under section 322B.115, subdivision 1, clause (6); or

(2) a sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company ~~not made in the usual or regular course of its business, but not including a transaction permitted without member approval in section 322B.77, subdivision 1, or a disposition in dissolution described in section 322B.813, subdivision 4, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;~~

(3) a plan of merger to which the limited liability company is a party, except as provided in section 322B.873, subdivision 2, clause (1)(i) and subject to section 322B.873, subdivision 3;

(4) a plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan;

(5) any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, the operating agreement, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests; or

(6) a resolution of the board of governors under section 322B.873, subdivision 2, to implement a business continuation agreement.

Sec. 28. Minnesota Statutes 1994, section 322B.386, subdivision 4, is amended to read:

Subd. 4. **NOTICE OF PROCEDURE.** (a) After the proposed action has been approved by the board of governors and, if necessary, the members, the limited liability company shall send to all members who have complied with subdivision 3 and to all members entitled to dissent if no member vote was required, a notice that contains:

(1) the address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;

(2) a form to be used to certify the date on which the member acquired the membership interests and to demand payment; and

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(3) a copy of section 322B.383, this section and, if applicable, section 322B.873, subdivisions 2 and 3, and a brief description of the procedures to be followed under these sections.

(b) In order to receive the fair value of the membership interests, a dissenting member must demand payment within 30 days after the notice required by paragraph (a) was given, but the dissenter retains all other rights of a member until the proposed action takes effect.

Sec. 29. Minnesota Statutes 1994, section 322B.386, subdivision 7, is amended to read:

Subd. 7. **PETITION AND DETERMINATION.** If the limited liability company receives a demand under subdivision 6, it shall, within 60 days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the limited liability company or file in court a petition requesting that the court determine the fair value of the membership interests, plus interest. The petition must be filed in the county in which the registered office of the limited liability company is located, except that a surviving foreign corporation that receives a demand relating to the membership interests of a constituent limited liability company shall file the petition in the county in this state in which the last registered office of the constituent limited liability company was located. The petition must name as parties all dissenters who have demanded payment under subdivision 6 and who have not reached agreement with the limited liability company. The limited liability company shall, after filing the petition, serve all parties with a summons and copy of the petition under the rules of civil procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the rules of civil procedure apply to this proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court considers proper, to receive evidence on and recommend the amount of the fair value of the membership interests. The court shall determine whether the member or members in question have fully complied with the requirements of this section, and shall determine the fair value of the membership interests, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the limited liability company or by a dissenter. The fair value of the membership interests as determined by the court is binding on all members, wherever located. A dissenter is entitled to judgment in cash for the amount by which the fair value of the membership interests as determined by the court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but is not liable to the limited liability company for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the membership interests as determined by the court, plus interest.

Sec. 30. Minnesota Statutes 1994, section 322B.40, subdivision 6, is amended to read:

Subd. 6. **PROCEDURE FOR FIXING TERMS.** (a) Subject to any restrictions in the articles of organization, the power granted in subdivision 5 may be exercised by a resolution or resolutions establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of

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the rights and preferences of a class or series established in the articles of organization or by resolution of the board of governors:

(1) may be made dependent upon facts ascertainable outside the articles of organization, or outside the resolution or resolutions establishing the class or series, if the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles of organization or in the resolution or resolutions establishing the class or series; and

(2) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company in connection with the establishment of the class or series if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(b) A statement setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization. However, where the members have received notice of the creation of membership interests with rights or preferences not set forth in the articles of organization before the acceptance of the contributions with respect to the membership interests, the statement may be filed any time within one year after the acceptance of contributions. The resolution is effective when the statement has been filed with the secretary of state; or, if it is not required to be filed with the secretary of state before the acceptance of contributions, on the date of its adoption by the governors.

(c) A statement filed with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles of organization for purposes of sections 322B.155 and 322B.383.

Sec. 31. Minnesota Statutes 1994, section 322B.42, subdivision 2, is amended to read:

Subd. 2. **IRREVOCABLE PERIOD.** Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the limited liability company, consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months, unless the contribution agreement provides for, or unless all other would-be contributors who are a party to a contribution consent to, an earlier revocation.

Sec. 32. Minnesota Statutes 1994, section 322B.42, subdivision 4, is amended to read:

Subd. 4. **FAILURE TO PAY REMEDIES.** (a) Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the limited liability company may proceed to collect the amount due in the same manner as a debt due the limited liability company, ~~or, if the amount due remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor, the board of governors may declare a forfeiture of the contribution agreement or cancel it in accordance with this subdivision.~~ If a would-be contributor does not make a required contribution of property

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or services, the limited liability company shall require the would-be contributor to contribute cash equal to that portion of the value, as stated in the limited liability company required records, of the contribution that has not been made.

(b) Upon forfeiture of a contribution agreement, If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the limited liability company for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale. Any excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale must be paid to the delinquent would-be contributor or to a legal representative. The payment must not exceed the amount of contribution actually made by the delinquent would-be contributor.

If the membership interests that were subject to the contribution agreement are sold according to this paragraph, the limited liability company shall pay to the delinquent would-be contributor or to the delinquent would-be contributor's legal representative the lesser of (i) the excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale, and (ii) the amount actually paid by the delinquent would-be contributor. If the membership interests that were subject to the contribution agreement are not sold according to this paragraph, the limited liability company may collect the amount due in the same manner as a debt due the limited liability company or cancel the contribution agreement according to paragraph (c).

(c) If, within 20 days after the limited liability company offers to sell If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor and the membership interests that were subject to the defaulted contribution agreement, no prospective purchaser offers to purchase the membership interests for a money price sufficient to pay the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale, or if the limited liability company has refunded to the would-be contributor or a legal representative a have not been sold according to paragraph (b), the limited liability company may cancel the contribution agreement, the limited liability company may retain the portion of the contribution agreement price actually paid, the contribution agreement may be canceled that does not exceed ten percent of the contribution agreement, and the limited liability company may retain the shall refund to the delinquent would-be contributor or the delinquent would-be contributor's legal representatives that portion of the contribution agreement price actually paid that does not exceed exceeds ten percent of the contribution agreement price.

Sec. 33. Minnesota Statutes 1994, section 322B.54, subdivision 1, is amended to read:

Subdivision 1. **WHEN DISTRIBUTIONS ARE PERMITTED.** (a) The board of governors may authorize and cause the limited liability company to make a distribution only if the board of governors determines, in accordance with subdivision 2, that the limited liability company will be able to pay its debts in the ordinary course of business after

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making the distribution and the board of governors does not know before the distribution is made that the determination was or has become erroneous, and.

(b) The limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.

(c) The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subdivision 3.

(d) The right of the board of governors to authorize, and the limited liability company to make, distributions may be prohibited, limited, or restricted by the articles of organization or operating agreement or an agreement.

Sec. 34. Minnesota Statutes 1994, section 322B.56, subdivision 1, is amended to read:

Subdivision 1. **LIABILITY.** In addition to any other liabilities, a governor who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 322B.54, subdivision 1 or 4, or a restriction contained in the articles of organization or operating agreement or an agreement, and who fails to comply with the standard of conduct provided in section 322B.663, is liable to the limited liability company, its receiver or any other person winding up its affairs jointly and severally with all other governors so liable and to other governors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 322B.54.

Sec. 35. Minnesota Statutes 1994, section 322B.60, subdivision 2, is amended to read:

Subd. 2. **MEETING.** After the issuance of the certificate filing of articles of organization, the organizers or the governors named in the articles of organization shall either hold an organizational meeting at the call of a majority of the organizers or of the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting an operating agreement, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting. Organizers and governors may waive notice of an organizational meeting in the same manner that a governor may waive notice of meetings of the board under section 322B.643, subdivision 5.

Sec. 36. Minnesota Statutes 1994, section 322B.643, subdivision 3, is amended to read:

Subd. 3. **CALLING MEETINGS AND NOTICE.** Unless the articles of organization or operating agreement provide for a different time period, a governor may call a board meeting by giving at least ten days notice or, in the case of organizational meetings

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under section 322B.60, subdivision 2, at least three days notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or operating agreement require it.

Sec. 37. Minnesota Statutes 1994, section 322B.646, is amended to read:

322B.646 ABSENT GOVERNORS.

If the articles of organization or operating agreement so provide, a governor may give advance written consent or opposition to a proposal to be acted on at a board of governors meeting. If the governor is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as a the vote of a governor present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the governor has consented or objected.

Sec. 38. Minnesota Statutes 1994, section 322B.653, is amended to read:

322B.653 ACT OF THE BOARD OF GOVERNORS.

The board of governors shall take action by the affirmative vote of the greater of (1) a majority of governors present at a duly held meeting at the time the action is taken, or (2) a majority of the minimum proportion of number of governors that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

Sec. 39. Minnesota Statutes 1994, section 322B.666, subdivision 2, is amended to read:

Subd. 2. **MATERIAL FINANCIAL INTEREST.** For purposes of this section:

(1) a governor does not have a material financial interest in a resolution fixing the compensation of the a governor or fixing the compensation of another governor as a governor, manager, employee, or agent of the limited liability company, even though the first governor is also receiving compensation from the limited liability company is not void or voidable or considered to be a contract or other transaction between a limited liability company and one or more of its governors for purposes of this section even though the governor receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified or even though other governors voting upon the resolution are also receiving compensation from the limited liability company; and

(2) a governor has a material financial interest in each organization in which the governor, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and the brothers and sisters of the spouse of the governor, or any combination of them have a material financial interest. For purposes of this section, a contract or other transaction between a limited liability company and the spouse, parents, children and spouses of children, brothers and sisters, spouses of brothers and sisters, and the brothers and sisters of the spouse of a governor, or any combina-

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tion of them, is considered to be a transaction between the limited liability company and the governor.

Sec. 40. Minnesota Statutes 1994, 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 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 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 or promised to the limited liability company, 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. 41. Minnesota Statutes 1994, section 322B.699, subdivision 6, is amended to read:

Subd. 6. **DETERMINATION OF ELIGIBILITY.** (a) All determinations whether indemnification of a person is required because the criteria set forth 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) by the board of governors by a majority of a quorum. If the governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

(2) if a quorum under clause (1) 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;

(3) if a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to clause (1) or (2) 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;

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(4) if a determination is not made under clauses (1) to (3), by the members, ~~excluding the votes of 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

(5) if an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) 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 after a (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 or 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 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 by an annually appointed committee of the board of governors, having at least one member who is a governor. The committee shall report at least annually to the board of governors concerning its actions.

Sec. 42. Minnesota Statutes 1994, section 322B.72, subdivision 2, is amended to read:

Subd. 2. **APPROVAL BY OWNERS.** (a) At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote. Except as provided in paragraph (b), a class or series of ownership interests of the organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization or articles of incorporation, as the case may be, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

(b) A class or series of ownership interests of the organization is not entitled to vote as a class or series solely because the plan of merger ~~or exchange~~ effects a cancellation of the ownership interests of the class or series if the plan of merger ~~or exchange~~ effects a cancellation of all ownership interests of the organization of all classes and series that are existing immediately before the merger ~~or exchange~~ and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their shares under section 322B.383 or 302A.471, as the case may be, in the event of the merger ~~or exchange~~.

Sec. 43. Minnesota Statutes 1994, section 322B.72, subdivision 3, is amended to read:

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Subd. 3. **WHEN APPROVAL BY SHAREHOLDERS OF A SURVIVING CORPORATION IS NOT REQUIRED.** Notwithstanding subdivisions 1 and 2, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

- (1) the articles of the corporation will not be amended in the transaction;
- (2) each holder of shares of the corporation that were outstanding immediately before the effective date time of the transaction will hold the same number of shares with identical rights immediately after that date;
- (3) the number of voting power of the outstanding shares of the corporation entitled to vote immediately after the merger, plus the number of voting power of the shares of the corporation entitled to vote issuable on conversion of securities other than shares or on the exercise of rights to purchase, securities issued by virtue of the terms of in the transaction, will not exceed by more than 20 percent, the number of voting power of the outstanding shares of the corporation entitled to vote immediately before the transaction; and
- (4) the number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than 20 percent, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

Sec. 44. Minnesota Statutes 1994, section 322B.75, subdivision 1, is amended to read:

Subdivision 1. **EFFECTIVE DATE OR TIME.** A merger or exchange is effective when the articles of merger or exchange are filed with the secretary of state or on a later date or at a later time specified in the articles of merger or exchange.

Sec. 45. Minnesota Statutes 1994, section 322B.77, subdivision 1, is amended to read:

Subdivision 1. **MEMBER APPROVAL AND WHEN NOT REQUIRED.** A limited liability company may, 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 and without member approval is required:

- (1) 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;
- (2) grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
- (3) transfer any or all of its property to a corporation all the shares of which are owned by the limited liability company.

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Sec. 46. Minnesota Statutes 1994, section 322B.803, subdivision 1, is amended to read:

Subdivision 1. **MANNER.** A limited liability company that has not accepted contributions may be dissolved and terminated by the organizers or governors in the manner set forth in this section.

Sec. 47. Minnesota Statutes 1994, section 322B.803, subdivision 2, is amended to read:

Subd. 2. **ARTICLES OF DISSOLUTION AND TERMINATION.** (a) A majority of the organizers or governors shall sign articles of dissolution and termination containing:

- (1) the name of the limited liability company;
- (2) the date of organization;
- (3) a statement that contributions have not been accepted;
- (4) a statement that no debts remain unpaid.

(b) The articles of dissolution and termination shall be filed with the secretary of state.

Sec. 48. Minnesota Statutes 1994, section 322B.813, subdivision 5, is amended to read:

Subd. 5. **DISTRIBUTION TO MEMBERS.** All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the limited liability company must be distributed to the members in accordance with sections 322B.52 and 322B.873.

Sec. 49. Minnesota Statutes 1994, section 322B.833, subdivision 1, is amended to read:

Subdivision 1. **WHEN PERMITTED.** A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:

- (1) in a supervised winding up and termination pursuant to section 322B.83;
- (2) in an action by a member when it is established that:
 - (i) the governors or the persons having the authority otherwise vested in the board of governors are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;
 - (ii) the governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, or governors of any limited liability company, or as managers, or as employees of a closely held limited liability company;
 - (iii) the members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;

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- (iv) the limited liability company assets are being misapplied or wasted; or
- (v) an event of dissolution has occurred under section 322B.80, subdivision 1, clause (1), (4) or (5) but the limited liability company is not acting to wind up its affairs;
- (3) in an action by a creditor when:
 - (i) the claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or
 - (ii) the limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or
- (4) in an action by the attorney general to dissolve the limited liability company in accordance with section 322B.843 when it is established that a decree of termination is appropriate.

Sec. 50. Minnesota Statutes 1994, section 322B.833, subdivision 2, is amended to read:

Subd. 2. **BUY-OUT ON MOTION.** In an action under subdivision 1, clause (2), ~~involving a closely held limited liability company at the time the action is commenced~~ and in which one or more of the circumstances described in that clause is established, the court may, upon motion of a limited liability company or a member, order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to either the limited liability company or the moving members, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

The purchase price of any membership interest so sold must be the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization, a member control agreement or business continuation agreement states a price for the redemption or buy-out of membership interests, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

Within five days after the entry of the order, the limited liability company shall provide each selling member with the information it is required to provide under section 322B.386, subdivision 5, paragraph (a).

If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall determine the fair value of the membership interests under the provisions of section 322B.386, subdivision 7, may allow interest or costs as provided in section 322B.386, subdivisions 1 and 8, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.

The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of a membership interest under this subdivision and provided that the limited liability company or the moving members post a bond

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in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member shall no longer have any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded.

Sec. 51. Minnesota Statutes 1994, section 322B.833, subdivision 4, is amended to read:

Subd. 4. **CONSIDERATIONS IN GRANTING RELIEF INVOLVING CLOSELY HELD LIMITED LIABILITY COMPANIES.** In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the duty that all members in a closely held limited liability company owe one another to act in an honest, fair, and reasonable manner in the operation of the limited liability company and the reasonable expectations of the all members as they exist at the inception and develop during the course of the members' relationship with the limited liability company and with each other. For purposes of this section, any written agreements, including employment agreements and buy-sell agreements, between or among members or between or among one or more members and the limited liability company are presumed to reflect the parties' reasonable expectations concerning matters dealt with in the agreements.

Sec. 52. Minnesota Statutes 1994, section 323.14, subdivision 4, is amended to read:

Subd. 4. **LIMITED LIABILITY AFTER DISSOLUTION.** (a) Subject to section 323.44, subdivision 7, the limited liability described in subdivisions 2 and 3 continues in full force for the dissolved partnership regardless of any dissolution, winding up, and termination of a limited liability partnership.

(b) If a limited liability partnership dissolves and its business is continued by a successor general partnership under section 323.37, then the limited liability described in subdivisions 2 and 3 and 4 also applies to that successor partnership until the expiration of the registration that the dissolved partnership had in effect under section 323.44 at the moment of dissolution. The successor general partnership may at any time file its own registration under section 323.44.

Sec. 53. Minnesota Statutes 1995 Supplement, section 336.8-103, is amended to read:

336.8-103 RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

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

(c) An interest in a partnership or limited liability company is a general intangible and is not a security or a financial asset, except as follows:

(1) An interest in a partnership or limited liability company is not a security unless and is not a general intangible if it is dealt in or traded on a securities exchanges exchange or in a securities markets market, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However,

(2) An interest in a partnership or limited liability company is a financial asset and is not a general intangible if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by article 3, even though it also meets the requirements of that article. However, a negotiable instrument governed by article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in section 336.9-115, is not a security or a financial asset.

Sec. 54. Minnesota Statutes 1995 Supplement, section 336.8-603, is amended to read:

336.8-603 SAVINGS CLAUSE.

(a) Laws 1995, chapter 194, does not affect an action or proceeding commenced before January 1, 1996.

(b) If a security interest in a security is perfected on January 1, 1996 December 31, 1995, and the action by which the security interest was perfected would suffice to perfect a security interest under Laws 1995, chapter 194 this act, no further action is required to continue perfection. If a security interest in a security is perfected at January 1, 1996 on December 31, 1995, but the action by which the security interest was perfected would not suffice to perfect a security interest under Laws 1995, chapter 194 in the same property under this act, the security interest remains perfected for a period of four months after January 1, 1996 during the period through December 31, 1996, so long as the security interest could have remained perfected under the law in effect on December 31, 1995, if that law continued in effect after December 31, 1995, and continues perfected thereafter if appropriate action to perfect under Laws 1995, chapter 194, this act is taken within that period during the one-year period from January 1, 1996 to December 31, 1996. If a security interest is perfected at January 1, 1996 on December 31, 1995, and the security interest can be perfected by filing under Laws 1995, chapter 194 this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

Sec. 55. EFFECTIVE DATE.

Sections 15, 53, and 54 are effective retroactive to January 1, 1996.

Presented to the governor March 19, 1996

Signed by the governor March 21, 1996, 2:15 p.m.

New language is indicated by underline, deletions by strikeout.