

those persons, including the state of Minnesota under section 524.2-105, and in such shares as would succeed to the designated individual's intestate estate under the laws of intestate succession of the state of Minnesota if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is an heir of the designated individual for the purposes of this section, whether or not the surviving spouse is remarried.

Sec. 10. **TRANSITION PROVISION.**

Section 1 does not affect any action or proceeding pending on its effective date or that is commenced before February 1, 1998, involving the validity of a conveyance recorded or filed after June 30, 1984, if a notice of the pendency of the action or proceeding is recorded or filed before February 1, 1998, in the office of the county recorder or registrar of titles in which the real property affected by the action or proceeding is located.

Sec. 11. **APPLICATION.**

Section 2 applies to all trusts, whenever created, in which a sole grantor has a power to alter, amend, revoke, or terminate the provisions of the trust on the later of (1) the effective date of this section, and (2) the date of the entry of the judgment and decree dissolving or annulling the grantor's marriage.

Presented to the governor March 13, 1997

Signed by the governor March 13, 1997, 10:45 a.m.

CHAPTER 10—S.F.No. 315

An act relating to business organizations; making technical changes applicable to business corporations and limited liability companies; permitting mergers of domestic corporations and limited liability companies; regulating filings with the secretary of state; amending Minnesota Statutes 1996, sections 302A.011, subdivisions 11, 30, 38, 39, 50, 53, and by adding subdivisions; 302A.111, subdivision 4; 302A.115, subdivision 1; 302A.171, subdivision 2; 302A.223, subdivision 5; 302A.401, subdivision 3; 302A.402, subdivision 3; 302A.405, subdivision 1; 302A.409, subdivision 4; 302A.413, by adding a subdivision; 302A.417, subdivision 7; 302A.423, subdivision 2; 302A.429, subdivision 2; 302A.437, subdivision 2; 302A.445, subdivision 1; 302A.449, subdivision 1; 302A.457, subdivision 2; 302A.461, subdivision 1; 302A.471, subdivision 3; 302A.473, subdivision 3; 302A.521, subdivisions 4 and 9; 302A.601, subdivision 4; 302A.611; 302A.613, subdivisions 1 and 2; 302A.615; 302A.621, subdivision 6; 302A.631; 302A.641, subdivision 2; 302A.651; 302A.671, subdivision 3; 302A.673, subdivision 3; 302A.675; 308A.005, by adding subdivisions; 317A.011, subdivisions 8 and 19; 322A.01; 322B.03, subdivisions 18 and 45; 322B.11; 322B.115, subdivisions 1 and 4; 322B.12, subdivision 1; 322B.20, subdivision 2; 322B.313, subdivision 2; 322B.33, by adding a subdivision; 322B.346, subdivision 2; 322B.356, subdivision 1; 322B.363, subdivision 1; 322B.37, subdivisions 1 and 3; 322B.383, subdivision 1, and by adding a subdivision; 322B.386, subdivision 3; 322B.699, subdivision 9; 322B.70, subdivisions 1 and 2; 322B.72, subdivisions 2 and 3; 322B.74, subdivisions 1 and 2; 322B.80, subdivision 1; 323.02, by adding subdivi-

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sions; and 333.001, subdivision 5, and by adding subdivisions; repealing Minnesota Statutes 1996, section 302A.011, subdivision 33.

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

ARTICLE 1

TECHNICAL CHANGES; BUSINESS CORPORATIONS

Section 1. Minnesota Statutes 1996, section 302A.011, subdivision 11, is amended to read:

Subd. 11. **FILED WITH THE SECRETARY OF STATE.** "Filed with the secretary of state" means that an original of a document meeting the applicable requirements of this chapter, signed and accompanied by a filing fee of \$35, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the original document the word "Filed" and the month, day, and year, and time of filing, record the document in the office of the secretary of state, and return the a document to the person who delivered it for filing.

Sec. 2. Minnesota Statutes 1996, section 302A.011, subdivision 30, is amended to read:

Subd. 30. **SIGNED.** (a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors as required by section 302A.237 or the holders of the required proportion or number of the voting power of the shares present and entitled to vote shareholders as required by section 302A.437.

(b) A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

Sec. 3. Minnesota Statutes 1996, section 302A.011, subdivision 38, is amended to read:

Subd. 38. **CONTROL SHARE ACQUISITION.** "Control share acquisition" means an acquisition, directly or indirectly, by an acquiring person of beneficial ownership of shares of an issuing public corporation that, except for section 302A.671, would, when added to all other shares of the issuing public corporation beneficially owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the ranges specified in section 302A.671, subdivision 2, paragraph (d), but does not include any of the following:

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(a) an acquisition before, or pursuant to an agreement entered into before, August 1, 1984;

(b) an acquisition by a donee pursuant to an inter vivos gift not made to avoid section 302A.671 or by a distributee as defined in section 524.1-201, clause (10);

(c) an acquisition pursuant to a security agreement not created to avoid section 302A.671;

(d) an acquisition under sections 302A.601 to 302A.661, if the issuing public corporation is a party to the transaction;

(e) an acquisition from the issuing public corporation;

(f) an acquisition for the benefit of others by a person acting in good faith and not made to avoid section 302A.671, to the extent that the person may not exercise or direct the exercise of the voting power or disposition of the shares except upon the instruction of others;

(g) an acquisition pursuant to a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or any of its subsidiaries, or by a fiduciary of the plan acting in a fiduciary capacity pursuant to the plan; or

(h) an acquisition subsequent to January 1, 1991, pursuant to an offer to purchase for cash pursuant to a tender offer all shares of the voting stock of the issuing public corporation:

(i) which has been approved by a majority vote of the members of a committee comprised of the disinterested members of the board of the issuing public corporation formed pursuant to section 302A.673, subdivision 1, paragraph (d), before the commencement of, or the public announcement of the intent to commence, the tender offer; and

(ii) pursuant to which the acquiring person will become the owner of over 50 percent of the voting stock of the issuing public corporation outstanding at the time of the transaction.

For purposes of this subdivision, shares beneficially owned by a plan described in clause (g), or by a fiduciary of a plan described in clause (g) pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan. All shares the beneficial ownership of which is acquired within a 120-day period, and all shares the beneficial ownership of which is acquired pursuant to a plan to make a control share acquisition, shall be deemed to have been acquired in the same acquisition.

Sec. 4. Minnesota Statutes 1996, section 302A.011, subdivision 39, is amended to read:

Subd. 39. **ISSUING PUBLIC CORPORATION.** "Issuing public corporation" means a corporation which has at least 50 shareholders, either: (1) a publicly held corporation that has at least 50 shareholders; or (2) any other corporation that has at least 100 shareholders, provided that if, before January 1, 1998, a corporation that has at least 50 shareholders elects to be an issuing public corporation by express amendment contained in the articles or bylaws, including bylaws approved by the board, that corporation is an issuing public corporation if it has at least 50 shareholders.

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Sec. 5. Minnesota Statutes 1996, section 302A.011, subdivision 50, is amended to read:

Subd. 50. **MARKET VALUE.** "Market value," when used in reference to shares or other property of any corporation, means the following:

(1) in the case of shares, the average closing sale price of a share on the composite tape for New York Stock Exchange listed shares during the 30 trading days immediately preceding the date in question or, with respect to the references in section 302A.553, subdivision 3, if a person or persons selling the shares have commenced a tender offer or have announced an intention to seek control of the corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement, or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which the shares are listed, or, if the shares are not listed on any such exchange, on the National Association of Securities Dealers, Inc. Automated Quotations NASDAQ National Market System, or, if the shares are not quoted on the National Association of Securities Dealers, Inc. Automated Quotations NASDAQ National Market System, the average closing bid quotation during the 30 trading days preceding the purchase of the shares in question of a share on the National Association of Securities Dealers, Inc. Automated Quotations System NASDAQ Small Cap Market, or any system then in use, or, with respect to the reference in section 302A.553, subdivision 3, if the person or persons selling the shares shall have commenced a tender offer or have announced an intention to seek control of the corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement, provided that if no quotation is available, the market value is the fair market value on the date in question of the shares as determined in good faith by the board of the corporation;

(2) in the case of property other than cash or shares, the fair market value of the property on the date in question as determined in good faith by the board of the corporation.

Sec. 6. Minnesota Statutes 1996, section 302A.011, subdivision 53, is amended to read:

Subd. 53. **TAKEOVER OFFER.** (a) "Takeover offer" means an offer to acquire shares of an issuing public corporation from a shareholder pursuant to a tender offer or request or invitation for tenders, if, after the acquisition of all shares acquired pursuant to the offer:

(1) the offeror would be directly or indirectly a beneficial owner of more than ten percent of any class or series of the outstanding shares of the issuing public corporation and was directly or indirectly the beneficial owner of ten percent or less of that class or series of the outstanding shares of the issuing public corporation before commencement of the offer; or

(2) the beneficial ownership by the offeror of any class or series of the outstanding shares of the issuing public corporation would be increased by more than ten percent of that class or series and the offeror was directly or indirectly the beneficial owner of ten percent or more of any class or series of the outstanding shares of the issuing public corporation before commencement of the offer.

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(b) Takeover offer does not include:

(1) an offer in connection with the acquisition of a share which, together with all other acquisitions by the offeror of shares of the same class or series of shares of the issuer, would not result in the offeror having acquired more than two percent of this that class or series during the preceding 12-month period;

(2) an offer by the issuer to acquire its own shares unless the offer is made during the pendency of a takeover offer by a person who is not an associate or affiliate of the issuer;

(3) an offer in which the issuing public corporation is an insurance company subject to regulation by the commissioner of commerce, a financial institution regulated by the commissioner, or a public service utility subject to regulation by the public utilities commission.

Sec. 7. Minnesota Statutes 1996, section 302A.111, subdivision 4, is amended to read:

Subd. 4. **OPTIONAL PROVISIONS; SPECIFIC SUBJECTS.** The provisions in paragraphs (a), (g), (q), (r), and (u) may be included in the articles.

The following provisions relating to the management of the business or the regulation of the affairs of a corporation in paragraphs (b) to (f), (h) to (p), (s), and (t) may be included either in the articles or, except for naming members of the first board, fixing a greater than majority director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:

(a) The members of the first board may be named in the articles (section 302A.201, subdivision 1);

(b) A manner for increasing or decreasing the number of directors may be provided (section 302A.203);

(c) Additional qualifications for directors may be imposed (section 302A.205);

(d) Directors may be classified (section 302A.213);

(e) The day or date, time, and place of board meetings may be fixed (section 302A.231, subdivision 1);

(f) Absent directors may be permitted to give written consent or opposition to a proposal (section 302A.233);

(g) A larger than majority vote may be required for board action (section 302A.237);

(h) Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer (section 302A.305, subdivision 2);

(i) Additional officers may be designated (section 302A.311);

(j) Additional powers, rights, duties, and responsibilities may be given to officers (section 302A.311);

(k) A method for filling vacant offices may be specified (section 302A.341, subdivision 3);

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(l) A certain officer or agent may be authorized to sign share certificates (section 302A.417, subdivision 2);

(m) The transfer or registration of transfer of securities may be restricted (section 302A.429);

(n) The day or date, time, and place of regular shareholder meetings may be fixed (section 302A.431, subdivision 3);

(o) Certain persons may be authorized to call special meetings of shareholders (section 302A.433, subdivision 1);

(p) Notices of shareholder meetings may be required to contain certain information (section 302A.435, subdivision 3);

(q) A larger than majority vote may be required for shareholder action (section 302A.437);

(r) Voting rights may be granted in or pursuant to the articles to persons who are not shareholders (section 302A.445, subdivision 4);

(s) Corporate actions giving rise to dissenter rights may be designated (section 302A.471, subdivision 1, clause (e));

(t) The rights and priorities of persons to receive distributions may be established (section 302A.551); and

(u) A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles (section 302A.251, subdivision 4).

Nothing in this subdivision limits the right of the board, by resolution, to take an action that may be included in the bylaws under this subdivision without including it in the bylaws, unless it is required to be included in the bylaws by another provision of this chapter.

Sec. 8. Minnesota Statutes 1996, section 302A.115, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS; PROHIBITIONS.** The corporate name:

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

(b) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&;

(c) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;

(d) Shall be distinguishable upon the records in the office of the secretary of state from the name of each domestic corporation, limited partnership, limited liability partnership, and limited liability company, whether profit or nonprofit, and each foreign corporation, limited partnership, limited liability partnership, and limited liability company

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authorized or registered to do business in this state, whether profit or nonprofit, and each name the right to which is, at the time of incorporation, reserved as provided for in sections 302A.117, 322A.03, 322B.125, or 333.001 to 333.54, unless there is filed with the articles one of the following:

(1) The written consent of the domestic corporation, limited partnership, limited liability partnership, or limited liability company, or the foreign corporation, limited partnership, limited liability partnership, or limited liability company 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;

(2) 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

(3) The applicant's affidavit that the corporation, limited partnership, or limited liability company with the name that is not distinguishable has been incorporated or on file in this state for at least three years prior to the affidavit, if it is a domestic corporation, limited partnership, or limited liability company, 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 corporation, limited partnership, or limited liability company, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit; that the corporation, limited partnership, or limited liability company or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the corporation, limited partnership, or limited liability company 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 corporation or limited liability company 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 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 corporation, limited partnership, limited liability company, 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 corporation, limited partnership, or limited liability company with the name that is not distinguishable in the county in which is located the registered office of the corporation, limited partnership, or limited liability company 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 corporation, limited partnership, limited liability company, 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. 9. Minnesota Statutes 1996, section 302A.171, subdivision 2, is amended to read:

Subd. 2. **MEETING.** After the filing of articles of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call

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of a majority of the incorporators or of the directors 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 corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, 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 incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to section 302A.231, subdivision 5.

Sec. 10. Minnesota Statutes 1996, section 302A.223, subdivision 5, is amended to read:

Subd. 5. ELECTION OF REPLACEMENTS. New directors may be elected at a meeting at which directors are removed. If the corporation allows cumulative voting and a shareholder notifies the presiding officer at any time prior to the election of new directors of intent to cumulate the votes of the shareholder, the presiding officer shall announce before the election that cumulative voting is in effect, and shareholders shall cumulate their votes as provided in section 302A.215, subdivision 1, clause (b).

Sec. 11. Minnesota Statutes 1996, section 302A.401, subdivision 3, is amended to read:

Subd. 3. PROCEDURE FOR FIXING TERMS. (a) Subject to any restrictions in the articles, the power granted in subdivision 2 may be exercised by a resolution or resolutions approved by the affirmative vote of a majority of the directors present required by section 302A.237 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 the rights and preferences of a class or series established in the articles or by resolution of the directors:

(1) may be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that 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 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 issuing corporation in connection with the establishment of the class or series if the corporation 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 corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption shall be filed with the secretary of state before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles; provided, however, where the

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shareholders have received notice of the creation of shares with rights or preferences not set forth in the articles before the issuance of the shares, the statement may be filed any time within one year after the issuance of the shares. 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 issuance of shares, on the date of its adoption by the directors.

(c) A statement filed with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles for purposes of sections 302A.137 and 302A.471.

Sec. 12. Minnesota Statutes 1996, section 302A.402, subdivision 3, is amended to read:

Subd. 3. BY ACTION OF BOARD ALONE; FILING OF ARTICLES OF AMENDMENT. (a) Subject to the restrictions provided in subdivision 2 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 302A.135 and 302A.137. In effecting a division or combination under this subdivision, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

(b) If a division or combination that includes an amendment of the articles is effected under this subdivision, then articles of amendment must be prepared that contain the information required by section 302A.139 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares of any class or series that remains unissued after the division or combination exceeding the percentage of authorized shares of that class or series that were unissued before the division or combination.

Sec. 13. Minnesota Statutes 1996, section 302A.405, subdivision 1, is amended to read:

Subdivision 1. CONSIDERATION; PROCEDURE. Subject to any restrictions in the articles:

(a) Shares may be issued for any consideration, including, without limitation, money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or to be rendered to the corporation under a written agreement, as authorized by resolution approved by the affirmative vote of a majority of the directors present required by section 302A.237, or, if provided for in the articles, approved by the affirmative vote of the holders of a majority of the voting power of the shares present shareholders required by section 302A.437, establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined; and

(b) Upon authorization in accordance with section 302A.402, the A corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or, subject to authorization of share dividends,

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divisions, and combinations according to section 302A.402, issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. No shares of a class or series, shares of which are then outstanding, shall be issued to the holders of shares of another class or series (except in exchange for or in conversion of outstanding shares of the other class or series), unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

Sec. 14. Minnesota Statutes 1996, section 302A.409, subdivision 4, is amended to read:

Subd. 4. **TERMS SET FORTH.** The instrument evidencing the right to purchase or, if no instrument exists, a ~~transaction statement written agreement~~, shall set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

Sec. 15. Minnesota Statutes 1996, section 302A.413, is amended by adding a subdivision to read:

Subd. 10. **CONTRACTUAL RIGHTS.** A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a corporation to grant first refusal rights or other rights to purchase from the corporation shares or other securities of the corporation to shareholders, subscribers, or other persons before they are offered to, or acquired by, any other person.

Sec. 16. Minnesota Statutes 1996, section 302A.417, subdivision 7, is amended to read:

Subd. 7. **UNCERTIFICATED SHARES.** Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its shares will be uncertificated shares. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates. This information is not required to be sent to the new shareholder by a publicly held corporation that has adopted a system of issuance, recordation, and transfer of its shares by electronic or other means not involving an issuance of certificates if the system complies with section 174 of the Securities Exchange Act of 1934. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

Sec. 17. Minnesota Statutes 1996, section 302A.423, subdivision 2, is amended to read:

Subd. 2. **RESTRICTIONS; RIGHTS.** A corporation shall not pay money for fractional shares if that action would result in the cancellation of more than 20 percent of the outstanding shares of a class or series. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate certificated or a transaction statement for a uncertificated fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to

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receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

Sec. 18. Minnesota Statutes 1996, section 302A.429, subdivision 2, is amended to read:

Subd. 2. RESTRICTIONS PERMITTED. A written restriction on the transfer or registration of transfer of securities of a corporation that is not manifestly unreasonable under the circumstances and is either: (1) noted conspicuously on the face or back of the certificate; or transmission statement (2) included in information sent to the holders of certificated shares in accordance with section 302A.417, subdivision 7, may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate or transmission statement included in information sent to the holders of uncertificated shares in accordance with section 302A.417, subdivision 7, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

Sec. 19. Minnesota Statutes 1996, section 302A.437, subdivision 2, is amended to read:

Subd. 2. VOTING BY CLASS OR SERIES. In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series, or of the total outstanding shares 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 bylaws in the case of voting as a class or series, the minimum percentage of the total number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 302A.443.

Sec. 20. Minnesota Statutes 1996, section 302A.445, subdivision 1, is amended to read:

Subdivision 1. DETERMINATION. The board may fix, or authorize an officer to fix, a date not more than 60 days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.

Sec. 21. Minnesota Statutes 1996, section 302A.449, subdivision 1, is amended to read:

Subdivision 1. AUTHORIZATION. (a) A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy, signed by the shareholder,

with an officer of the corporation at or before the meeting at which the appointment is to be effective. A written In addition, a shareholder of a publicly held corporation may cast or authorize the casting of a vote by a proxy by transmitting to the corporation or the corporation's duly authorized agent before the meeting, an appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegram, cablegram, or other means of electronic transmission, provided that the corporation has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the shareholder. Any by means of a telegram, cablegram, or any other form of electronic transmission, including telephonic transmission, whether or not accompanied by written instructions of the shareholder. The electronic transmission must set forth or be submitted with information from which it can be determined that the appointment was authorized by the shareholder. If it is determined that a telegram, cablegram, or other electronic transmission is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination shall specify the information upon which they relied to make that determination.

(b) A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used, provided that the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

(c) An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or otherwise authorized by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

Sec. 22. Minnesota Statutes 1996, section 302A.457, subdivision 2, is amended to read:

Subd. 2. METHOD OF APPROVAL; ENFORCEABILITY; COPIES. (a) A written agreement among persons described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.

(b) The agreement is enforceable by the persons described in subdivision 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A copy of the agreement shall be filed with the corporation. The existence and location of a copy of the agreement shall be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement included in information sent to the holders of uncertificated shares according to section 302A.417, subdivision 7.

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(c) A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.

Sec. 23. Minnesota Statutes 1996, section 302A.461, subdivision 1, is amended to read:

Subdivision 1. **SHARE REGISTER; DATES OF ISSUANCE.** (a) A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder.

(b) A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the dates on which certificates or transaction statements representing certificated or uncertificated shares were issued.

Sec. 24. Minnesota Statutes 1996, section 302A.471, subdivision 3, is amended to read:

Subd. 3. **RIGHTS NOT TO APPLY.** (a) Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to a shareholder of the surviving corporation in a merger, if the shares of the shareholder are not entitled to be voted on the merger.

(b) If a date is fixed according to section 302A.445, subdivision 1, for the determination of shareholders entitled to receive notice of and to vote on an action described in subdivision 1, only shareholders as of the date fixed, and beneficial owners as of the date fixed who hold through shareholders, as provided in subdivision 2, may exercise dissenters' rights.

Sec. 25. Minnesota Statutes 1996, section 302A.473, subdivision 3, is amended to read:

Subd. 3. **NOTICE OF DISSENT.** If the proposed action must be approved by the shareholders, a shareholder who is entitled to dissent under section 302A.471 and who wishes to exercise dissenters' rights must file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and must not vote the shares in favor of the proposed action.

Sec. 26. Minnesota Statutes 1996, section 302A.521, subdivision 4, is amended to read:

Subd. 4. **PROHIBITION OR LIMIT ON INDEMNIFICATION OR ADVANCES.** The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subdivisions 2 and 3 including, without limitation, monetary limits on indemnification or advances of expenses, if the prohibition or conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the

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articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

Sec. 27. Minnesota Statutes 1996, section 302A.521, subdivision 9, is amended to read:

Subd. 9. **INDEMNIFICATION OF OTHER PERSONS.** Nothing in this section shall be construed to limit the power of the corporation to indemnify other persons other than a director, officer, employee, or member of a committee of the board of the corporation by contract or otherwise.

Sec. 28. Minnesota Statutes 1996, section 302A.621, subdivision 6, is amended to read:

Subd. 6. **RIGHTS OF DISSENTING SHAREHOLDERS.** In the event all of the stock of one or more domestic subsidiaries that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenters' rights under section 302A.471, without regard to ~~sections~~ section 302A.471, subdivision 3, and 302A.473. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenters' rights under section 302A.471, subdivision 1, paragraph (a), if the articles of incorporation of the surviving corporation constituted an amendment to the articles of incorporation of the parent, that shareholder of the parent has dissenters' rights as provided under sections 302A.471 and 302A.473. Except as provided in this subdivision, sections 302A.471 and 302A.473 do not apply to any merger effected under this section.

Sec. 29. Minnesota Statutes 1996, section 302A.651, subdivision 1, is amended to read:

Subdivision 1. **WHEN PERMITTED.** A domestic corporation may merge with or participate in an exchange with a foreign corporation by following the procedures set forth in this section, if:

(1) with respect to a merger, the merger is permitted by the laws of the state jurisdiction under which the foreign corporation is incorporated; and

(2) with respect to an exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not the exchange is permitted by the laws of the state jurisdiction under which the foreign corporation is incorporated.

Sec. 30. Minnesota Statutes 1996, section 302A.671, subdivision 3, is amended to read:

Subd. 3. **MEETING OF SHAREHOLDERS.** If the acquiring person so requests in writing at the time of delivery of an information statement pursuant to subdivision 2, and has made, or has made a bona fide written offer to make, a control share acquisition and gives a written undertaking to pay or reimburse the issuing public corporation's expenses of a special meeting, except the expenses of the issuing public corporation in opposing according voting rights with respect to shares acquired or to be acquired in the control share acquisition, within ten days after receipt by the issuing public corporation

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of the information statement, a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 302A.433, subdivision 1, for the sole purpose of considering the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to the control share acquisition. The special meeting shall be held no later than 55 days after receipt of the information statement and written undertaking to pay or reimburse the issuing public corporation's expenses of the special meeting, unless the acquiring person agrees to a later date. If the acquiring person so requests in writing at the time of delivery of the information statement, (1) the special meeting shall not be held sooner than 30 days after receipt by the issuing public corporation of the information statement and (2) the record date for the meeting must be at least 30 days prior to the date of the meeting. If no request for a special meeting is made, consideration of the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to the control share acquisition shall be presented at the next special or annual meeting of the shareholders of which notice has not been given, unless prior thereto the matter of the voting rights becomes moot. The issuing public corporation is not required to have the voting rights to be accorded to shares acquired or to be acquired according to a control share acquisition considered at the next special or annual meeting of the shareholders unless it has received the information statement and documents required by subdivision 4 at least 55 days before the meeting. The notice of the meeting shall at a minimum be accompanied by a copy of the information statement (and a copy of any amendment to the information statement previously delivered to the issuing public corporation) and a statement disclosing that the board of the issuing public corporation recommends approval of, expresses no opinion and is remaining neutral toward, recommends rejection of, or is unable to take a position with respect to according voting rights to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired in the control share acquisition. The notice of meeting shall be given at least ten days prior to the meeting. Any amendments to the information statement received after mailing of the notice of the meeting must be mailed promptly to the shareholders by the issuing public corporation.

Sec. 31. Minnesota Statutes 1996, section 302A.673, subdivision 3, is amended to read:

Subd. 3. **APPLICATION.** (a) Unless by express provision electing to be subject to this section contained in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section does not apply to any business combination of an issuing public corporation, that is not, at any time during the period from June 1, 1987, until adoption of the article or bylaw provision, a publicly held corporation.

(b) Except as provided in paragraph (c), this section does not apply to any business combination of an issuing public corporation:

(1) if, prior to the time the issuing public corporation becomes a publicly held corporation or becomes subject to this section by virtue of an election under paragraph (a), including any time prior to the time that the corporation becomes an issuing public corporation, articles or bylaws of the corporation contain a provision expressly electing not to be subject to this section;

(2) if the board of the issuing public corporation adopts, prior to September 1, 1987, an amendment to the issuing public corporation's bylaws expressly electing not to be subject to this section;

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(3) if an amendment to the articles or bylaws of the issuing public corporation is approved by the shareholders, other than interested shareholders and their affiliates and associates, holding a majority of the outstanding voting power of all shares entitled to vote, excluding the shares of interested shareholders and their affiliates and associates, expressly electing not to be subject to this section and the amendment provides that it is not to be effective until 18 months after the vote of shareholders and provides that, except as provided in paragraph (c), it does not apply to any business combination of the issuing public corporation with an interested shareholder whose share acquisition date is on or before the effective date of the amendment; or

(4) if the business combination was consummated before, or if a binding agreement for the business combination was entered into before, the day following June 1, 1987.

(c) This section does not apply to any business combination of an issuing public corporation with, with respect to, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with:

(1) any person that would have been an interested shareholder on June 1, 1987, had this section been in effect on this date and had the issuing public corporation been an issuing public corporation on this date;

(2) any interested shareholder whose share acquisition date is either before the effective date of the article or bylaw provision by which an issuing public corporation that was not subject to this section immediately prior to the election elected to be subject to this section, or on the effective date, but prior to the effective time of the article or bylaw provision; or

(3) in the case of a corporation that was not subject to this section immediately prior to becoming a publicly held corporation, any interested shareholder whose share acquisition date is either before the date on which the corporation becomes a publicly held corporation or on that date, but prior to the time the corporation becomes a publicly held corporation, and to whom the application of this section is expressly excluded by an amendment to the articles or bylaws of the corporation approved by the shareholders before the corporation becomes a publicly held corporation and, if expressly provided by the amendment to the articles or bylaws, any affiliate or associate of an interested shareholder described in this clause.

This section applies to any business combination of an issuing public corporation to which it previously did not apply because of provisions in articles or bylaws adopted or approved under paragraph (b), clause (1), (2), or (3), upon an amendment to the articles or bylaws approved by shareholders holding a majority of the outstanding voting power of all shares entitled to vote expressly electing to be subject to this section becoming effective. Also, this section does not apply to any business combination of the corporation 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 person that would have been an interested shareholder at the effective time of the amendment if this section had been applicable.

Sec. 32. Minnesota Statutes 1996, section 302A.675, is amended to read:

302A.675 TAKEOVER OFFER; FAIR PRICE.

Subdivision 1. **FAIR PRICE REQUIREMENT.** An offeror may not acquire shares of a publicly held corporation within two years following the last purchase of

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shares pursuant to a takeover offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the shareholder is afforded, at the time of the proposed acquisition, a reasonable opportunity to dispose of the shares to the offeror upon substantially equivalent terms as those provided in the earlier takeover offer.

Subd. 2. **EXCEPTION.** Subdivision 1 does not apply if the proposed acquisition of shares is approved by a committee of the board's disinterested directors before the purchase of any shares by the offeror pursuant to a the earlier takeover offer. The provisions of section 302A.673, subdivision 1, paragraph (d), relating to a committee of disinterested directors, apply to this section.

Sec. 33. REPEALER.

Minnesota Statutes 1996, section 302A.011, subdivision 33, is repealed.

ARTICLE 2

TECHNICAL CHANGES; LIMITED LIABILITY COMPANIES

Section 1. Minnesota Statutes 1996, section 322B.11, is amended to read:

322B.11 TWO MEMBER REQUIREMENT.

A limited liability company shall have ~~two~~ one or more members at the time of its formation. ~~A limited liability company shall be dissolved under section 322B.80, subdivision 1, clause (5), whenever the limited liability company ceases to have at least two members unless the remaining member admits a new member within 90 days of the termination of the continued membership of the former member.~~

Sec. 2. Minnesota Statutes 1996, 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; and
- (4) a statement of 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; if different from the 30-year period set forth in section 322B.20, subdivision 2.

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(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. 3. Minnesota Statutes 1996, 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, which may be perpetual.

Sec. 4. Minnesota Statutes 1996, 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 or a member control agreement, 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. 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. 5. Minnesota Statutes 1996, section 322B.37, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION AND SCOPE.** A written agreement among persons who are then members, including a sole member, or who have signed contribution agreements, relating to the control of any phase of the business and affairs of the limited liability company, its liquidation, dissolution and termination, or the relations among members or persons who have signed contribution agreements is valid as provided in subdivision 2. Wherever this chapter provides that a particular result may or must be obtained through a provision in the articles of organization (other than a provision required by section 322B.115, subdivision 1, to be contained in the articles) or in the operating agreement, the same result can be accomplished through a member control agreement valid under this section or through a procedure established by a member control agreement valid under this section. A member control agreement may waive, in whole or in part, a member's dissenting rights under sections 322B.383 and 322B.386, but may not waive dissenters' rights under section 322B.873, subdivision 2, clause (1). ~~A member control agreement may not include an agreement to give transfer consent. A member con-~~

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control agreement may include a business continuation agreement only if the articles of organization grant the members the power to enter into business continuation agreements.

Sec. 6. Minnesota Statutes 1996, section 322B.37, subdivision 3, is amended to read:

Subd. 3. **ENFORCEABILITY AND COPIES.** (a) An agreement valid under subdivisions 1 and 2 is enforceable by persons who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A copy of the agreement must be filed with the limited liability company. The limited liability company shall note in its required records that the members' interests are governed by a member control agreement entered into under this section.

(b) A member control agreement valid under subdivisions 1 and 2 is specifically enforceable, ~~except that an agreement to give dissolution avoidance consent is not specifically enforceable.~~

(c) A member control agreement may waive dissenters' rights, subject to section 322B.873, subdivision 3.

(d) A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member control agreement from the limited liability company at the company's expense.

Sec. 7. Minnesota Statutes 1996, 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;

(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;

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(vii) changes the a statement that was required under section 322B.115, subdivision 1, clause (5) regarding the power of remaining members to avoid dissolution by giving dissolution avoidance consent, if the statement was required under the law when the articles of organization were executed;

(viii) changes the a statement that was required under section 322B.115, subdivision 1, clause (6) regarding the power of members to enter into a business continuation agreement, if the statement was required under the law when the articles of organization were executed; or

(2) a sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company, 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. 8. Minnesota Statutes 1996, 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;

(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;

(5) except as otherwise provided in the articles of organization or a member control agreement, 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;

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- (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 one remaining members or a new member is admitted as provided in section 322B.11, member 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 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; or (B) if the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member; or

- (6) when terminated by the secretary of state according to section 322B.960.

ARTICLE 3

AMENDMENTS TO PERMIT MERGER OF DOMESTIC CORPORATION AND FOREIGN LIMITED LIABILITY COMPANY

Section 1. Minnesota Statutes 1996, section 302A.011, is amended by adding a subdivision to read:

Subd. 55. **ACQUIRING ORGANIZATION.** "Acquiring organization" means a corporation, foreign corporation, or domestic or foreign limited liability company that acquires in an exchange the shares of a corporation or foreign corporation or the membership interests of a domestic or foreign limited liability company.

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Sec. 2. Minnesota Statutes 1996, section 302A.011, is amended by adding a subdivision to read:

Subd. 56. CONSTITUENT ORGANIZATION. "Constituent organization" means a corporation, foreign corporation, or a domestic or foreign limited liability company that is a party to a merger or an exchange.

Sec. 3. Minnesota Statutes 1996, section 302A.011, is amended by adding a subdivision to read:

Subd. 57. OWNERS. "Owners" means shareholders in the case of a corporation or foreign corporation and members in the case of a limited liability company.

Sec. 4. Minnesota Statutes 1996, section 302A.011, is amended by adding a subdivision to read:

Subd. 58. OWNERSHIP INTERESTS. "Ownership interests" means shares in the case of a corporation or foreign corporation and membership interests in the case of a domestic or foreign limited liability company.

Sec. 5. Minnesota Statutes 1996, section 302A.011, is amended by adding a subdivision to read:

Subd. 59. SURVIVING ORGANIZATION. "Surviving organization" means the corporation or foreign corporation or domestic or foreign limited liability company resulting from a merger.

Sec. 6. Minnesota Statutes 1996, section 302A.601, subdivision 4, is amended to read:

Subd. 4. **MERGER OR EXCHANGE WITH A LIMITED LIABILITY COMPANY.** A corporation may participate in a merger or exchange with a domestic limited liability company pursuant to chapter 322B. The dissenters' rights for shareholders of a corporation are governed by this chapter.

Sec. 7. Minnesota Statutes 1996, section 302A.611, is amended to read:

302A.611 PLAN OF MERGER OR EXCHANGE.

Subdivision 1. **CONTENTS OF PLAN.** A plan of merger or exchange shall contain:

(a) The names of the ~~corporations~~ constituent organizations proposing to merge or participate in an exchange, and:

- (1) in the case of a merger, the name of the surviving ~~corporation~~ organization;
- (2) in the case of an exchange, the name of the acquiring ~~corporation~~ organization;
- (b) The terms and conditions of the proposed merger or exchange;

(c)(1) In the case of a merger, the manner and basis of converting the shares ownership interests of the ~~constituent corporations~~ organizations into securities of the surviving ~~corporation~~ organization or of any other ~~corporation~~ organization, or, in whole or in part, into money or other property; or

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(2) In the case of an exchange, the manner and basis of exchanging the shares to be acquired for securities of the acquiring corporation organization or any other corporation organization or, in whole or part, into money or other property;

(d) In the case of a merger, a statement of any amendments to the articles of incorporation or organization of the surviving corporation organization proposed as part of the merger; and

(e) Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

Subd. 2. **OTHER AGREEMENTS.** The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares ownership interests of one or more classes or series of another corporation organization through a negotiated agreement with the shareholders owners or otherwise.

Sec. 8. Minnesota Statutes 1996, section 302A.613, subdivision 1, is amended to read:

Subdivision 1. **BOARD APPROVAL; NOTICE TO SHAREHOLDERS.** A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and shall then be submitted at a regular or a special meeting to the shareholders of (i) each constituent corporation, in the case of a plan of merger, and (ii) the corporation whose shares will be acquired by the acquiring corporation organization in the exchange, in the case of a plan of exchange. If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this section, written notice shall be given to every shareholder of a corporation, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 302A.435 for notice of meetings of shareholders. The written notice shall state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange shall be included in or enclosed with the notice. If the merger or exchange is with a domestic or foreign limited liability company, the plan of merger or exchange must also be approved in the manner required by the laws of the state under which the limited liability company is organized.

Sec. 9. Minnesota Statutes 1996, section 302A.613, subdivision 2, is amended to read:

Subd. 2. **APPROVAL BY SHAREHOLDERS OWNERS.** (a) At the meeting a vote of the shareholders owners shall be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote and, if the merger or exchange is with a domestic or foreign limited liability company, when approved in the manner required by the laws of the state under which the limited liability company is organized. Except as provided in paragraph (b), a class or series of shares of the corporation 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, entitle the class or series of shares 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 shares of the corporation is not entitled to vote as a class or series solely because the plan of merger effects a cancellation of the shares of the class or

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series if the plan of merger effects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 302A.471 in the event of the merger.

Sec. 10. Minnesota Statutes 1996, section 302A.615, is amended to read:

302A.615 ARTICLES OF MERGER OR EXCHANGE; CERTIFICATE.

Subdivision 1. **CONTENTS OF ARTICLES.** Upon receiving the approval required by section 302A.613, articles of merger or exchange shall be prepared that contain:

(a) the plan of merger or exchange; and

(b) a statement that the plan has been approved by each ~~corporation~~ constituent organization pursuant to this chapter.

Subd. 2. **ARTICLES SIGNED, FILED.** The articles of merger or exchange shall be signed on behalf of each constituent ~~corporation~~ organization and filed with the secretary of state.

Subd. 3. **CERTIFICATE.** The secretary of state shall issue a certificate of merger to the surviving ~~corporation~~ organization or its legal representative and a certificate of exchange to the acquiring ~~corporation~~ organization or its legal representative.

Sec. 11. Minnesota Statutes 1996, section 302A.631, is amended to read:

302A.631 ABANDONMENT.

Subdivision 1. **BY SHAREHOLDERS OR PLAN.** After a plan of merger or exchange has been approved by the shareholders entitled to vote on the approval of the plan as provided in section 302A.613, and before the effective date of the plan, it may be abandoned:

(a) if (i) the shareholders of each of the constituent corporations entitled to vote on the approval of the plan as provided in section 302A.613 have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote and, if; (ii) the merger or exchange is with a domestic or foreign limited liability company, if abandonment is approved in such manner as may be required by the laws of the state under which the limited liability company is organized; and (iii) the shareholders of a constituent corporation are not entitled to vote on the approval of the plan under section 302A.613, the board of directors of the constituent corporation has approved the abandonment by the affirmative vote of a majority of the directors present;

(b) if the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(c) pursuant to subdivision 2.

Subd. 2. **BY BOARD.** A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution of the board of directors of any constituent corporation abandoning the plan of merger or exchange approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under

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the plan. If a plan of merger or exchange is with a domestic or foreign limited liability company, the plan of merger or exchange may be abandoned before the effective date of the plan by a resolution of the limited liability company adopted according to the laws of the state under which the limited liability company is organized, subject to the contract rights of any other person under the plan.

Subd. 3. **FILING OF ARTICLES.** If articles of merger or exchange have been filed with the secretary of state, but have not yet become effective, the constituent ~~corporations~~ organizations, in the case of abandonment under subdivision 1, clause (a), the constituent ~~corporations~~ organizations or any one of them, in the case of abandonment under subdivision 1, clause (b), or the abandoning ~~corporation~~ organization in the case of abandonment under subdivision 2, shall file with the secretary of state articles of abandonment that contain:

- (a) The names of the constituent ~~corporations~~ organizations;
- (b) The provision of this section under which the plan is abandoned; and
- (c) If the plan is abandoned under subdivision 2, the text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

Sec. 12. Minnesota Statutes 1996, section 302A.641, subdivision 2, is amended to read:

Subd. 2. **EFFECT ON CORPORATION ORGANIZATION.** When a merger becomes effective:

(a) The constituent ~~corporations~~ organizations become a single ~~corporation~~ entity, the surviving corporation or surviving limited liability company, as the case may be;

(b) The separate existence of all constituent ~~corporations~~ organizations except the surviving ~~corporation~~ organization ceases;

(c) If the surviving organization is a corporation, the surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter;

(d) The surviving corporation organization, whether a corporation, foreign corporation, or domestic or foreign limited liability company, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent corporations organizations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the constituent corporations organizations vests in the surviving corporation organization without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent corporation organization by its current officers or managers, as the case may be, or, if the corporation organization no longer exists, by its last officers or managers, as the case may be. The title to any real estate or any interest therein vested in any of the constituent corporations organizations does not revert nor in any way become impaired by reason of the merger;

(e) The surviving ~~corporation~~ organization is responsible and liable for all the liabilities and obligations of each of the constituent ~~corporations~~ organizations. A claim of or

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against or a pending proceeding by or against a constituent ~~corporation~~ organization may be prosecuted as if the merger had not taken place, or the surviving ~~corporation~~ organization may be substituted in the place of the constituent ~~corporation~~ organization. Neither the rights of creditors nor any liens upon the property of a constituent ~~corporation~~ organization are impaired by the merger; and

(f) The articles of the surviving ~~corporation~~ organization are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

Sec. 13. Minnesota Statutes 1996, section 302A.651, is amended to read:

302A.651 MERGER OR EXCHANGE WITH FOREIGN CORPORATION OR LIMITED LIABILITY COMPANY.

Subdivision 1. **WHEN PERMITTED.** A domestic corporation may merge with or participate in an exchange with a foreign corporation or limited liability company by following the procedures set forth in this section, if:

(1) with respect to a merger, the merger is permitted by the laws of the state under which the foreign corporation or limited liability company is incorporated or organized; and

(2) with respect to an exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign corporation or limited liability company is incorporated or organized.

Subd. 2. **LAWS APPLICABLE BEFORE TRANSACTION.** Each domestic corporation shall comply with the provisions of sections 302A.601 to 302A.651 with respect to the merger or exchange of shares of corporations and each foreign corporation or limited liability company shall comply with the applicable provisions of the laws under which it was incorporated or organized or by which it is governed.

Subd. 3. **DOMESTIC SURVIVING CORPORATION.** If the surviving ~~corporation~~ organization in a merger will be a domestic corporation, it shall comply with all the provisions of this chapter.

Subd. 4. **FOREIGN SURVIVING CORPORATION ORGANIZATION.** If the surviving ~~corporation~~ organization in a merger will be a foreign corporation or limited liability company and will transact business in this state, it shall comply with the provisions of chapter 303 with respect to foreign corporations or chapter 322B with respect to foreign limited liability companies. In every case the surviving ~~corporation~~ organization shall file with the secretary of state:

(a) An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent ~~corporation~~ organization and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the surviving ~~corporation~~ organization;

(b) An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

(c) An agreement that it will promptly pay to the dissenting shareholders of each domestic constituent corporation the amount, if any, to which they are entitled under section 302A.473.

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

Sec. 14. Minnesota Statutes 1996, section 322B.70, subdivision 1, is amended to read:

Subdivision 1. **MERGER.** With or without a business purpose, a limited liability company may merge:

(1) with another limited liability company ~~or a domestic corporation~~ pursuant to a plan of merger approved in the manner provided in sections 322B.71 to 322B.75; and

(2) with a domestic corporation under a plan of merger approved in the manner provided in sections 322B.71 to 322B.75, and in chapter 302A; and

(3) with any foreign corporation or foreign limited liability company pursuant to a plan of merger approved in the manner provided in section 322B.76.

Sec. 15. Minnesota Statutes 1996, section 322B.70, subdivision 2, is amended to read:

Subd. 2. **EXCHANGE.** (a) A limited liability company may acquire all of the ownership interests of one or more classes or series of another limited liability company ~~or domestic corporation~~ pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75.

(b) A limited liability company may acquire all of the ownership interests of one or more classes or series of a domestic corporation pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75, and in chapter 302A.

(c) A domestic corporation may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75, and in chapter 302A.

~~(e)~~ (d) A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in section 322B.76.

Sec. 16. Minnesota Statutes 1996, 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 effects a cancellation of the ownership interests of the class or series if the plan of merger effects a cancellation of all ownership interests of the organization of all classes and series that are existing immediately before the merger 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.

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

Sec. 17. Minnesota Statutes 1996, section 322B.72, subdivision 3, is amended to read:

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 time of the transaction will hold the same number of shares with identical rights immediately after that date;

(3) the voting power of the outstanding shares of the corporation entitled to vote immediately after the merger, plus the voting power of the shares of the corporation entitled to vote issuable on conversion of or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than 20 percent, the 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. **APPROVAL BY CONSTITUENT DOMESTIC CORPORATION.** If the merger or exchange is with a domestic corporation, the plan of merger or exchange must also be approved in the manner provided in chapter 302A.

Sec. 18. Minnesota Statutes 1996, section 322B.74, subdivision 1, is amended to read:

Subdivision 1. **BY OWNERS OR PLAN.** After a plan of merger or exchange has been approved by the owners entitled to vote on the approval of the plan as provided in section 322B.72, and before the effective date of the plan, it may be abandoned:

(1) if the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 322B.72 have approved the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the ownership interests entitled to vote and, if the owners of a constituent organization are not entitled to vote on the approval of the plan under section 322B.72, the governing board of that constituent organization limited liability company has approved the abandonment by the affirmative vote of a majority of the board members present, and the abandonment has been approved in the manner provided in chapter 302A by any constituent organization that is a domestic corporation;

(2) if the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(3) pursuant to subdivision 2.

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Sec. 19. Minnesota Statutes 1996, section 322B.74, subdivision 2, is amended to read:

Subd. 2. **BY THE GOVERNING BOARD.** A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution of the governing board of any constituent organization that is a limited liability company abandoning the plan of merger or exchange approved by the affirmative vote of a majority of the board members present, subject to the contract rights of any other person under the plan. Abandonment by the board of a constituent organization that is a domestic corporation may be accomplished as provided in chapter 302A.

ARTICLE 4

CONFORMING AMENDMENTS

Section 1. Minnesota Statutes 1996, section 308A.005, is amended by adding a subdivision to read:

Subd. 7a. **FILED WITH THE SECRETARY OF STATE.** “Filed with the secretary of state” means that a document meeting the applicable requirements of this chapter, signed and accompanied by the required filing fee, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the document the word “Filed” and the month, day, and year of filing, record the document in the office of the secretary of state, and return a document to the person who delivered it for filing.

Sec. 2. Minnesota Statutes 1996, section 308A.005, is amended by adding a subdivision to read:

Subd. 10a. **SIGNED.** (a) “Signed” means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or by a resolution approved by the directors or the members.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

Sec. 3. Minnesota Statutes 1996, section 317A.011, subdivision 8, is amended to read:

Subd. 8. **FILED WITH THE SECRETARY OF STATE.** “Filed with the secretary of state” means that an original of a document meeting the requirements of this chapter, signed, and accompanied by a filing fee of \$35, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the original the word “Filed” and the month, day, and year, and time of filing, record the document in the office of the secretary of state, and return the a document to the person who delivered it for filing.

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Sec. 4. Minnesota Statutes 1996, section 317A.011, subdivision 19, is amended to read:

Subd. 19. **SIGNED.** (a) "Signed" means that the signature of a person is written on a document, as provided in section 645.44, subdivision 14. A document required by this chapter to be filed with the secretary of state must be signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors, as required by section 317A.237, or the required proportion or number of members with voting rights, if any, if required by section 317A.443.

(b) A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

Sec. 5. Minnesota Statutes 1996, section 322A.01, is amended to read:

322A.01 DEFINITIONS.

As used in sections 322A.01 to 322A.87, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in section 322A.11, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 322A.32.

(4) "Executed" means signed.

(5) "Filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed and accompanied by the required filing fee, has been delivered to the secretary of state of this state.

(6) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) (7) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(6) (8) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(7) (9) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) (10) "Partner" means a limited or general partner.

(9) (11) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

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(10)(12) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(11)(13) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, limited liability company (whether domestic or foreign), or corporation.

(14)(a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or by a resolution approved by the partners.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

(12)(15) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Sec. 6. Minnesota Statutes 1996, section 322B.03, subdivision 18, is amended to read:

Subd. 18. **FILED WITH THE SECRETARY OF STATE.** "Filed with the secretary of state" means that an original of a document meeting the applicable requirements of this chapter, signed and accompanied by a filing fee of \$35, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, record the document in the office of the secretary of state, and return the document to the person who delivered it for filing.

Sec. 7. Minnesota Statutes 1996, section 322B.03, subdivision 45, is amended to read:

Subd. 45. **SIGNED.** (a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization or operating agreement or a resolution approved by the affirmative vote of the required proportion or number of governors as required by section 322B.653 or the required proportion of the voting power of membership interests present and entitled to vote members as required by section 322B.346.

(b) A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

Sec. 8. Minnesota Statutes 1996, section 322B.115, subdivision 4, is amended to read:

Subd. 4. **OPTIONAL PROVISIONS AND SPECIFIC SUBJECTS.** The provisions in clauses (1), (7), (15), (16), and (18) may be included in the articles of organization or a member control agreement under section 322B.37.

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The following provisions relating to the management of the business or the regulation of the affairs of a limited liability company in clauses (2) to (6), (8) to (14), and (17) may be included 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, 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.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);

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(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).

Nothing in this subdivision limits the right of the board, by resolution, to take an action that may be included in the operating agreement under this subdivision without including it in the operating agreement, unless it is required to be included in the operating agreement by another provision of this chapter.

Sec. 9. Minnesota Statutes 1996, 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 each domestic limited liability company, limited liability partnership, corporation, and limited partnership, whether profit or nonprofit, and each foreign limited liability company, limited liability partnership, corporation, and limited partnership authorized or registered to do business in this state, whether profit or nonprofit, and each name the right to which is, at the time of organization, reserved 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

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registered to do business in this state for at least three years prior to the affidavit, if it is a foreign limited liability company, corporation, or limited partnership, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit, that the limited liability company, corporation, or limited partnership or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the 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 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, 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. 10. Minnesota Statutes 1996, section 322B.33, is amended by adding a subdivision to read:

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

Sec. 11. Minnesota Statutes 1996, 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 proportion 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

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be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 322B.353.

Sec. 12. Minnesota Statutes 1996, section 322B.356, subdivision 1, is amended to read:

Subdivision 1. **DETERMINATION.** The board of governors may fix, or authorize a manager to fix, a date not more than 60 days, or a shorter time period provided in the articles of organization or operating agreement, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

Sec. 13. Minnesota Statutes 1996, 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, 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 copy, facsimile, telecommunication, or other reproduction of the original 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. 14. Minnesota Statutes 1996, section 322B.383, is amended by adding a subdivision to read:

Subd. 3. **RIGHTS NOT TO APPLY.** If a date is fixed according to section 322B.356, subdivision 1, for the determination of members entitled to receive notice of and to vote on an action described in subdivision 1, only members as of the date fixed may exercise dissenters' rights.

Sec. 15. Minnesota Statutes 1996, section 322B.386, subdivision 3, is amended to read:

Subd. 3. **NOTICE OF DISSENT.** If the proposed action must be approved by the members, a member who is entitled to dissent under section 322B.383 and who wishes to exercise dissenters' rights must file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and must not vote the membership interests in favor of the proposed action.

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

Sec. 16. Minnesota Statutes 1996, section 322B.699, subdivision 9, is amended to read:

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

Sec. 17. Minnesota Statutes 1996, section 323.02, is amended by adding a subdivision to read:

Subd. 10. **FILED WITH THE SECRETARY OF STATE.** “Filed with the secretary of state” means that a document meeting the applicable requirements of this chapter, signed and accompanied by the required filing fee, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the document the word “Filed” and the month, day, and year of filing, record the document in the office of the secretary of state, and return a document to the person who delivered it for filing.

Sec. 18. Minnesota Statutes 1996, section 323.02, is amended by adding a subdivision to read:

Subd. 11. **SIGNED.** (a) “Signed” means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or by a resolution approved by the partners.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

Sec. 19. Minnesota Statutes 1996, section 333.001, subdivision 5, is amended to read:

Subd. 5. **EXECUTED.** “Executed” means executed by one natural person, if a proprietorship; by a general partner if a general or limited partnership or limited liability partnership; by a manager, if a limited liability company; by an officer, if a corporation; by a trustee, if a trust; or by a beneficial owner or managing agent, if some other form of business organization signed.

Sec. 20. Minnesota Statutes 1996, section 333.001, is amended by adding a subdivision to read:

Subd. 6. **SIGNED.** (a) “Signed” means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by the organizational documents, bylaws, agreements, or by a resolution approved by the ultimately responsible managing entity for the business organization.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

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

Sec. 21. Minnesota Statutes 1996, section 333.001, is amended by adding a subdivision to read:

Subd. 7. **FILED WITH THE SECRETARY OF STATE.** “Filed with the secretary of state” means that a document meeting the applicable requirements of this chapter, signed and accompanied by the required filing fee, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the document the word “Filed” and the month, day, and year of filing, record the document in the office of the secretary of state, and return a document to the person who delivered it for filing.

Presented to the governor March 17, 1997

Signed by the governor March 18, 1997, 9:20 a.m.

CHAPTER 11—H.F.No. 441

An act relating to commerce; enacting the revised article 5 of the Uniform Commercial Code; regulating letters of credit; making conforming changes; amending Minnesota Statutes 1996, sections 336.1–105; 336.2–512; 336.9–103; 336.9–104; 336.9–105; 336.9–106; 336.9–304; and 336.9–305; proposing coding for new law in Minnesota Statutes, chapter 336; repealing Minnesota Statutes 1996, sections 336.5–101; 336.5–102; 336.5–103; 336.5–104; 336.5–105; 336.5–106; 336.5–107; 336.5–108; 336.5–109; 336.5–110; 336.5–111; 336.5–112; 336.5–113; 336.5–114; 336.5–115; 336.5–116; and 336.5–117.

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

ARTICLE 1

UNIFORM COMMERCIAL CODE

Revised Article 5

LETTERS OF CREDIT

Section 1. **[336.5–101] SHORT TITLE.**

This article may be cited as Uniform Commercial Code—Letters of Credit.

Sec. 2. **[336.5–102] DEFINITIONS.**

(a) In this article:

(1) “Adviser” means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

New language is indicated by underline, deletions by strikeout.