

## CHAPTER 322B

## LIMITED LIABILITY COMPANIES

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**322B.01 CITATION.**

This chapter may be cited as the "Minnesota limited liability company act."

**History:** 1992 c 517 art 2 s 1

**322B.02 LAWS NOT TO APPLY.**

Sections 222.19, 222.23, 300.01, 300.02, 300.06 to 300.09, 300.12 to 300.68, and chapters 301, 316, and 556 do not apply to a limited liability company organized under this chapter.

**History:** 1992 c 517 art 2 s 2

**322B.03 DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

Subd. 2. **Acquiring organization.** "Acquiring organization" means the limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.

Subd. 3. **Address.** "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which must not be a post office box.

Subd. 4. **Agreement to give dissolution avoidance consent.** "Agreement to give dissolution avoidance consent" means a member control agreement under section 322B.37, or a part of a member control agreement, under which the members agree in advance that if in the future the continued membership of any member is terminated through an event covered in the agreement, then each remaining member shall give dissolution avoidance consent.

Subd. 5. **Agreement to give transfer consent.** "Agreement to give transfer consent" means a member control agreement under section 322B.37, or a part of a member control agreement, under which the members agree in advance to give any consent referred to in section 322B.313, subdivision 2.

Subd. 6. **Articles or articles of organization.** "Articles" or "articles of organization" means, in the case of a limited liability company organized under this chapter, articles of or-

ganization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, and articles of termination. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization.

**Subd. 7. Board or board of governors.** "Board" or "board of governors" means the board of governors of a limited liability company.

**Subd. 8. Board member.** "Board member" means a natural person serving on the board of governors in the case of a limited liability company and a natural person serving on the board of directors in the case of a corporation.

**Subd. 9. Business continuation agreement.** "Business continuation agreement" means a member control agreement under section 322B.37, or a part of a member control agreement, made before or after the limited liability company has incurred an event of dissolution, under which the members:

(1) agree that, despite any dissolution, winding up and termination of the limited liability company as a legal entity, its business will be continued in a successor organization through a merger, transfer of assets, transfer of membership interests, or otherwise; and

(2) specify the terms and conditions under which the business continuation will occur.

**Subd. 10. Class.** "Class," when used with reference to membership interests, means a category of membership interests that differs in one or more rights or preferences from another category of membership interests of the limited liability company.

**Subd. 11. Closely held limited liability company.** "Closely held limited liability company" means a limited liability company that does not have more than 35 members.

**Subd. 12. Constituent organization.** "Constituent organization" means a limited liability company or a domestic or foreign corporation that is a party to a merger or an exchange.

**Subd. 13. Contribution agreement.** "Contribution agreement" means an agreement between a person and a limited liability company, under which:

(1) the person agrees to make a contribution in the future; and

(2) the limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution, and reflect the contribution in the required records.

**Subd. 14. Contribution allowance agreement.** "Contribution allowance agreement" means an agreement between a person and a limited liability company, under which:

(1) the person has the right, but not the obligation, to make a contribution in the future; and

(2) the limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution, and reflect the contribution in the required records.

**Subd. 15. Dissolution.** "Dissolution" means that the limited liability company has incurred an event under section 322B.80, subdivision 1, subject only to sections 322B.823 and 322B.85, that obligates the limited liability company to wind up its affairs and to terminate its existence as a legal entity.

**Subd. 16. Dissolution avoidance consent.** "Dissolution avoidance consent" means the consent of all remaining members:

(1) given, as provided in section 322B.80, subdivision 1, clause (5), after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and

(2) that the limited liability company must be continued as a legal entity without dissolution.

**Subd. 17. Distribution.** "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members

in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.

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

**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.

**Subd. 19. Financial rights.** "Financial rights" means a member's rights:

- (1) to share in profits and losses as provided in section 322B.326;
- (2) to share in distributions as provided in section 322B.50;
- (3) to receive interim distributions as provided in section 322B.51; and
- (4) to receive termination distributions as provided in section 322B.873, subdivision 1, clause (3).

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

**Subd. 20. Foreign limited liability company.** "Foreign limited liability company" means a limited liability company organized for profit that is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability company may be organized under this chapter.

**Subd. 21. Good faith.** "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

**Subd. 22. Governance rights.** "Governance rights" means all a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.

**Subd. 23. Governing board.** "Governing board" means the board of governors in the case of a limited liability company and the board of directors in the case of a corporation.

**Subd. 24. Governor.** "Governor" means a natural person serving on the board of governors.

**Subd. 25. Intentionally.** "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person intentionally violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

**Subd. 26. Know and knowledge.** A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know of the fact.

**Subd. 27. Legal representative.** "Legal representative" means a person empowered to act for another person, including, but not limited to, an agent, manager, partner, or associate, of an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.

**Subd. 28. Limited liability company.** "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.

**Subd. 29. Manager.** "Manager" means a person elected, appointed, or otherwise designated as a manager by the board of governors, and any other person considered elected as a manager pursuant to section 322B.68.

Subd. 30. **Member.** "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company.

Subd. 31. **Membership interest.** "Membership interest" means a member's interest in a limited liability company consisting of a member's financial rights, a member's right to assign financial rights as provided in section 322B.31, a member's governance rights, and a member's right to assign governance rights as provided in section 322B.313.

Subd. 32. **Notice.** "Notice" is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company when in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company. In all other cases, notice is given to a person when mailed to the person at an address designated by the person or at the last known address of the person, or when communicated to the person orally, or when handed to the person, or when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion who is residing there. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is considered received when it is given.

Subd. 33. **Operating agreement.** "Operating agreement" means rules, resolutions, or other provisions that:

(1) relate to the management of the business or the regulation of the affairs of the limited liability company; and

(2) have been made expressly part of the operating agreement by the action, taken from time to time under section 322B.603, by the board of governors or the members.

Subd. 34. **Organization.** "Organization" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Subd. 35. **Owners.** "Owners" means members in the case of a limited liability company and shareholders in the case of a corporation.

Subd. 36. **Ownership interests.** "Ownership interests" means membership interests in the case of a limited liability company and shares in the case of a corporation.

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

Subd. 37. **Person.** "Person" includes a natural person and an organization.

Subd. 38. **Pertains.** A contribution "pertains" to a particular series when the contribution is made in return for a membership interest in that particular series. A contribution pertains to a particular class when the class has no series and the contribution is made in return for a membership interest in the class. A contribution that pertains to a series does not pertain to the class of which the series is a part.

Subd. 39. **Principal executive office.** "Principal executive office" means an office where the elected or appointed chief manager of the limited liability company has an office. If the limited liability company has no elected or appointed chief manager, principal executive office means the registered office of the limited liability company.

Subd. 40. **Registered office.** "Registered office" means the place in this state designated in the articles of organization as the registered office of the limited liability company.

Subd. 41. **Related organization.** "Related organization" of a specified limited liability company means a parent or subsidiary of the specified limited liability company or another subsidiary of a parent of the specified limited liability company.

Subd. 42. **Required records.** "Required records" are those records required to be maintained under section 322B.373.

Subd. 43. **Security.** "Security" has the meaning given it in section 80A.14, subdivision 18.

Subd. 44. **Series.** "Series" means a category of membership interests, within a class of membership interests, that have some of the same rights and preferences as other membership interests within the same class, but that differ in or one or more rights and preferences from another category of membership interests within that class.

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 or the required proportion of the voting power of membership interests present and entitled to vote.

(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, or in any other manner reproduced on the document.

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

Subd. 46. **Successor organization.** "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under section 322B.833, subdivision 6, continues the business of the dissolved and terminated limited liability company.

Subd. 47. **Surviving organization.** "Surviving organization" means the limited liability company or domestic or foreign corporation resulting from a merger.

Subd. 48. **Termination.** "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is filed with the secretary of state under section 322B.826 or is considered filed with the secretary of state under section 322B.75, subdivision 2, clause (3).

Subd. 49. **Vote.** "Vote" includes authorization by written action.

Subd. 50. **Winding up.** "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on its business, except to the extent necessary for concluding its affairs, and disposes of its assets under section 322B.873.

Subd. 51. **Written action.** "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

**History:** 1992 c 517 art 2 s 3; 1993 c 137 s 18-22

## FORMATION AND ARTICLES

### 322B.10 PURPOSES.

A limited liability company may be organized under this chapter for any business purpose or purposes, unless some other statute of this state requires organization for any of those purposes under a different law. Unless otherwise provided in its articles of organization, a limited liability company has general business purposes.

**History:** 1992 c 517 art 2 s 4

### 322B.105 ORGANIZERS.

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

**History:** 1992 c 517 art 2 s 5; 1996 c 361 s 1

**322B.11 TWO MEMBER REQUIREMENT.**

A limited liability company shall have two 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.

**History:** 1992 c 517 art 2 s 6

**322B.115 ARTICLES OF ORGANIZATION.**

**Subdivision 1. Required provisions.** The articles of organization must contain:

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

**Subd. 2. Statutory provisions that may be modified only in articles of organization.** The following provisions govern a limited liability company unless modified in the articles of organization or a member control agreement under section 322B.37:

- (1) a limited liability company has general business purposes (section 322B.10);
- (2) a limited liability company has certain powers (section 322B.20);
- (3) the power to adopt, amend, or repeal the operating agreement is vested in the board of governors (section 322B.603);
- (4) a limited liability company must allow cumulative voting for governors (section 322B.63);
- (5) the affirmative vote of a majority of governors present is required for an action of the board of governors (section 322B.653);
- (6) a written action by the board of governors taken without a meeting must be signed by all governors (section 322B.656);
- (7) the board may accept contributions, make contribution agreements, and make contribution allowance agreements (sections 322B.40, subdivision 1; 322B.42; and 322B.43);
- (8) all membership interests are ordinary membership interests entitled to vote and are of one class with no series (section 322B.40, subdivision 5, clauses (1) and (2));
- (9) all membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors (section 322B.40, subdivision 5, clause (2));
- (10) the restatement of value of previous contributions is to be determined according to a specified process (section 322B.41, subdivisions 3 and 4);
- (11) a member has certain preemptive rights, unless otherwise provided by the board of governors (section 322B.33);
- (12) the affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled to vote (section 322B.35, subdivision 1);
- (13) the voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members (section 322B.356);
- (14) members share in distributions in proportion to the value reflected in the required records of the contributions of members (section 322B.50);

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

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

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

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

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

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

**Subd. 3. Statutory provisions that may be modified either in articles of organization or in the operating agreement.** The following provisions govern a limited liability company unless modified in the articles of organization, a member control agreement under section 322B.37 or in the operating agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Subd. 4. Optional provisions and specific subjects.** The following provisions relating to the management of the business or the regulation of the affairs of a limited liability compa-



ny 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);

(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).

**Subd. 5. Optional provisions generally.** The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.

**Subd. 6. Powers need not be stated.** It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

**History:** 1992 c 517 art 2 s 7; 1993 c 137 s 23,24; 1996 c 361 s 2-4

### 322B.12 LIMITED LIABILITY COMPANY NAME.

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

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

(2) contain the words "limited liability company," or must contain the abbreviation "LLC" or, in the case of 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 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 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.

**Subd. 2. Determination.** The secretary of state shall determine whether a name is "distinguishable" from another name for purposes of this section and section 322B.125.

**Subd. 3. Other laws affecting use of names.** This section and section 322B.125 do not abrogate or limit the law of unfair competition or unfair practices, or sections 333.001 to 333.54, or the laws of the United States with respect to the right to acquire and protect copy-

rights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, or derogate the common law or the principles of equity.

**Subd. 4. Use of a name by a surviving organization.** A limited liability company that is merged with another limited liability company or domestic or foreign corporation, or that is organized by the reorganization of one or more limited liability companies or domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a limited liability company all or substantially all of the assets of another limited liability company or domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other limited liability companies or domestic or foreign corporations, if the other limited liability company or domestic or foreign corporation was organized under the laws of, or is authorized to transact business in, this state.

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

**Subd. 6. Contest of registration of name.** A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 5.22.

**History:** 1992 c 517 art 2 s 8; 1995 c 58 s 6; 1995 c 128 art 2 s 5; 1996 c 361 s 5

### 322B.125 RESERVED NAME.

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

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

**Subd. 2. Method of reservation.** The reservation is made by filing with the secretary of state a request that the name be reserved. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods.

**Subd. 3. Transfer of reservation.** The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee.

**History:** 1992 c 517 art 2 s 9; 1996 c 361 s 6

### 322B.13 REGISTERED OFFICE AND AGENT.

**Subdivision 1. Registered office.** A limited liability company shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business of the limited liability company and need not be the same as the principal executive office of a limited liability company.

**Subd. 2. Registered agent.** A limited liability company may designate in its articles of organization a registered agent. The registered agent may be a natural person residing in this

state, a domestic corporation or a domestic limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office.

**History:** 1992 c 517 art 2 s 10

### **322B.135 CHANGE OF REGISTERED OFFICE OR AGENT.**

Subdivision 1. **Statement.** A limited liability company may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state a statement containing:

- (1) the name of the limited liability company;
- (2) if the address of its registered office is to be changed, the new address of its registered office;
- (3) if its registered agent is to be designated or changed, the name of its new registered agent;
- (4) if the name of its registered agent is to be changed, the name of its registered agent as changed;
- (5) a statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (6) a statement that the change of registered office or registered agent was authorized by resolution approved by the affirmative vote of a majority of the governors present.

Subd. 2. **Resignation of agent.** A registered agent of a limited liability company may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the limited liability company at its principal executive office, or to a legal representative of the limited liability company. The appointment of the agent terminates 30 days after the notice is filed with the secretary of state.

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

**History:** 1992 c 517 art 2 s 11; 1996 c 361 s 7

### **322B.14 AMENDMENT OF ARTICLES OF ORGANIZATION.**

The articles of organization of a limited liability company may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each organizer may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 322B.14 to 322B.16. An amendment that merely restates the then existing articles of organization, as amended, is not an amendment for the purposes of section 322B.63, subdivision 2, or 322B.33, subdivision 9.

**History:** 1992 c 517 art 2 s 12

### **322B.145 PROCEDURE FOR AMENDMENT BEFORE CONTRIBUTION.**

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

**History:** 1992 c 517 art 2 s 13; 1996 c 361 s 8

**322B.15 PROCEDURE FOR AMENDMENT AFTER CONTRIBUTION.**

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

Subd. 2. **Submission to members.** A resolution approved by the affirmative vote of a majority of the governors present, or proposed by a member or members owning three percent or more of the voting power of the members entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the members of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the members and voted upon at one meeting, but the same or substantially the same amendment proposed by a member or members need not be submitted to the members or be voted upon at more than one meeting during a 15-month period. The resolution may amend the articles of organization in their entirety to restate and supersede the original articles of organization and all amendments to them.

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

Subd. 4. **Approval by members.** (a) The proposed amendment is adopted when approved by the affirmative vote of the members required by section 322B.346, except as provided in paragraphs (b) and (c), and subdivision 5.

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

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

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

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

Subd. 5. **Certain restatements.** An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board of governors and may, but need not, be submitted to and approved by the members as provided in subdivisions 2, 3, and 4.

**History:** 1992 c 517 art 2 s 14; 1996 c 361 s 9-11

**322B.155 CLASS OR SERIES VOTING ON AMENDMENTS.**

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

(1) effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series;

(2) effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;

(3) change the rights or preferences of the membership interests of the class or series;

(4) change the membership interests of the class or series into the same or a different number of membership interests of another class or series;

(5) create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and

preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;

(6) divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board of governors to do so;

(7) limit or deny any existing preemptive rights of the membership interests of the class or series; or

(8) cancel or otherwise affect distributions on the membership interests of the class or series.

**History:** 1992 c 517 art 2 s 15; 1996 c 361 s 12

### **322B.16 ARTICLES OF AMENDMENT.**

When an amendment has been adopted, articles of amendment must be prepared that contain:

(1) the name of the limited liability company;

(2) the amendment adopted;

(3) with respect to an amendment restating the articles, a statement that the amendment restating the articles of organization correctly sets forth without change the corresponding provisions of the articles as previously amended if the amendment was approved only by the board;

(4) if the amendment provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of membership interests, a statement of the manner in which it will be effected; and

(5) a statement that the amendment has been adopted pursuant to this chapter.

**History:** 1992 c 517 art 2 s 16

### **322B.165 EFFECT OF AMENDMENT.**

Subdivision 1. **Effect on cause of action.** An amendment does not affect an existing cause of action in favor of or against the limited liability company, nor a pending suit to which the limited liability company is a party, nor the existing rights of persons other than members.

Subd. 2. **Effect of change of name.** If the limited liability company name is changed by the amendment, a suit brought by or against the limited liability company under its former name does not abate for that reason.

Subd. 3. **Effect of amendments restating articles.** When effective under section 322B.175, an amendment restating the articles of organization in their entirety supersedes the original articles of organization and all amendments to the original articles of organization.

**History:** 1992 c 517 art 2 s 17

### **322B.17 FILING OF ARTICLES OF ORGANIZATION.**

Articles of organization and articles of amendment must be filed with the secretary of state.

**History:** 1992 c 517 art 2 s 18

### **322B.175 EFFECTIVE DATE OF ARTICLES OF ORGANIZATION.**

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

**History:** 1992 c 517 art 2 s 19; 1996 c 361 s 13

**322B.18 PRESUMPTION AND CERTIFICATE OF ORGANIZATION.**

When the articles of organization have been filed with the secretary of state and the required fee has been paid to the secretary of state, it is presumed that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been organized, and the secretary of state shall issue a certificate of organization to the limited liability company. This presumption does not apply against this state in a proceeding to cancel or revoke the certificate of organization or to compel the involuntary dissolution of the limited liability company.

**History:** 1992 c 517 art 2 s 20

**POWERS****322B.20 POWERS.**

Subdivision 1. **Generally and limitations.** A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization.

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.

Subd. 3. **Legal capacity.** A limited liability company may sue and be sued, and complain, defend, and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its limited liability company name.

Subd. 4. **Property ownership.** A limited liability company may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest in property, wherever situated.

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

Subd. 6. **Trading in securities and obligations.** A limited liability company may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality of a government.

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

Subd. 8. **Investment.** A limited liability company may invest and reinvest its funds.

Subd. 9. **Holding property as security.** A limited liability company may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the limited liability company, as security for the payment of money loaned, advanced, or invested.

Subd. 10. **Location.** A limited liability company may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

Subd. 11. **Donations.** A limited liability company may make donations, irrespective of limited liability company benefit, for: (1) the public welfare; (2) social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes; and for similar or related purposes; (3) for the purpose of fostering national or international amateur sports competition; and (4) the prevention of cruelty to children and animals.

Subd. 12. **Pensions and benefits.** A limited liability company may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the limited liability company, employee or incentive benefit plans, trusts, and provisions to or for the benefit of,

any or all of its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

**Subd. 13. Participating in management.** A limited liability company may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating limited liability company would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

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

**Subd. 15. Limited liability company seal.** A limited liability company may have, alter at its pleasure, and use a limited liability company seal as provided in section 322B.21.

**Subd. 16. Operating agreement.** A limited liability company may adopt, amend, and repeal an operating agreement relating to the management of the business or the regulation of the affairs of the limited liability company as provided in section 322B.603.

**Subd. 17. Committees.** A limited liability company may establish committees of the board of governors, elect or appoint persons to the committees, and define their duties as provided in section 322B.66 and fix their compensation.

**Subd. 18. Managers, employees, and agents.** A limited liability company may elect or appoint managers, employees and agents of the limited liability company, and define their duties as provided in sections 322B.67 to 322B.69, and fix their compensation.

**Subd. 19. Contributions.** A limited liability company may accept contributions under section 322B.40 and may enter into contribution agreements under section 322B.42 and contribution allowance agreements under section 322B.43.

**Subd. 20. Loans, guaranties, and sureties.** A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 322B.693.

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

**Subd. 22. Indemnification.** A limited liability company shall indemnify those persons identified in section 322B.699 against certain expenses and liabilities only as provided in section 322B.699 and may indemnify other persons.

**Subd. 23. Assumed names.** A limited liability company may conduct all or part of its business under one or more assumed names as provided in sections 333.001 to 333.06.

**Subd. 24. Other powers.** A limited liability company may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the limited liability company is organized.

**History:** 1992 c 517 art 2 s 21; 1993 c 137 s 25-29; 1996 c 361 s 14

### 322B.21 LIMITED LIABILITY COMPANY SEAL.

**Subdivision 1. Seal not required.** A limited liability company may, but need not, have a limited liability company seal, and the use or nonuse of a limited liability company seal does not affect the validity, recordability, or enforceability of a document or act. If a limited liability company has a limited liability company seal, the use of the seal by the limited liability company on a document is not necessary.

**Subd. 2. Required words and use.** If a limited liability company has a limited liability company seal, the seal may consist of a mechanical imprinting device, or a rubber stamp with a facsimile of the seal affixed on it, or a facsimile or reproduction of either. The seal need



include only the word "Seal," but it may also include a part or all of the name of the limited liability company and a combination, derivation, or abbreviation of either or both of the phrases "a Minnesota Limited Liability Company" and "Limited Liability Company Seal." If a limited liability company seal is used, it or a facsimile of it may be affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on any document.

**History:** 1992 c 517 art 2 s 22

### 322B.22 EFFECT OF LACK OF POWER AND ULTRA VIRES.

The doing, continuing, or performing by a limited liability company of an act, or an executed or wholly or partially executory contract, conveyance or transfer to or by the limited liability company, if otherwise lawful, is not invalid because the limited liability company was without the power to do, continue, or perform the act, contract, conveyance, or transfer, unless the lack of power is established in a court in this state:

(1) in a proceeding by a member against the limited liability company to enjoin the doing, continuing, or performing of the act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or to be, performed or made pursuant to a contract to which the limited liability company is a party, the court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and in so doing may allow to the limited liability company or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the court in setting aside and enjoining the performance of the contract;

(2) in a proceeding by or in the name of the limited liability company, whether acting directly or through a legal representative, or through members in a representative or derivative suit, against the incumbent or former managers or governors of the limited liability company for exceeding or otherwise violating their authority, or against a person having actual knowledge of the lack of power; or

(3) in a proceeding by the attorney general, as provided in section 322B.843, to dissolve the limited liability company, or in a proceeding by the attorney general to enjoin the limited liability company from the transaction of unauthorized business.

**History:** 1992 c 517 art 2 s 23

### 322B.23 TRANSACTION OF BUSINESS OUTSIDE MINNESOTA.

By enacting this chapter the Minnesota legislature recognizes the limited liability company as an important and constructive form of business organization. The legislature understands that:

(1) businesses organized under this chapter will often transact business in other states;

(2) for businesses organized under this chapter to function effectively and for this chapter to be a useful enactment, this chapter must be accorded the same comity and full faith and credit that states typically accord to each other's corporate laws; and

(3) specifically, it is essential that other states recognize both the legal existence of limited liability companies formed under this chapter and the legal status of all members of these limited liability companies.

The legislature therefore specifically seeks that, subject to any reasonable registration requirements, other states extend to this chapter the same full faith and credit under section 1 of Article IV of the Constitution of the United States, and the same comity, that Minnesota extends to statutes that other states enact to provide for the establishment and operation of business organizations.

**History:** 1992 c 517 art 2 s 24

## MEMBERS INTERESTS

### 322B.30 NATURE OF A MEMBERSHIP INTEREST AND STATEMENT OF INTEREST OWNED.

Subdivision 1. **Generally.** A membership interest is personal property. A member has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.

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

**Subd. 3. Grant of a security interest.** For the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each to be characterized as provided in section 336.8-103, paragraph (c).

**History:** 1992 c 517 art 2 s 25; 1993 c 137 s 30,31; 1996 c 361 s 15

### 322B.303 PERSONAL LIABILITY OF MEMBERS AS MEMBERS.

**Subdivision 1. Limited liability rule.** Subject to subdivision 2, a member, governor, manager, or other agent of a limited liability company is not, merely on account of this status, personally liable for the acts, debts, liabilities, or obligations of the limited liability company.

**Subd. 2. Piercing the veil.** The case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under Minnesota law also applies to limited liability companies.

**Subd. 3. Limited liability after dissolution.** The limited liability described in subdivisions 1 and 2 continues in full force regardless of any dissolution, winding up, and termination of a limited liability company.

**History:** 1992 c 517 art 2 s 26

### 322B.306 TERMINATION OF A MEMBERSHIP INTEREST.

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

**Subd. 2. When expulsion permitted.** Unless otherwise provided in the articles of organization, a member may not be expelled.

**Subd. 3. Effect of termination of membership on the governance rights of the terminated member.** If for any reason the continued membership of a member is terminated:

(1) if dissolution under section 322B.80, subdivision 1, clause (5), is avoided under that clause, then the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; and

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

**Subd. 4. Additional effects if termination of membership is wrongful.** If a member resigns or retires in contravention of the articles of organization or a member control agreement then:

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

(2) if dissolution avoidance consent is not obtained, section 322B.873 applies.

**History:** 1992 c 517 art 2 s 27; 1993 c 137 s 32-34

**322B.31 ASSIGNMENT OF FINANCIAL RIGHTS.**

Subdivision 1. **Assignment of financial rights permitted.** Except as provided in subdivision 3, a member's financial rights are transferable in whole or in part.

Subd. 2. **Effect of assignment of financial rights.** An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the limited liability company, or to cause dissolution. The assignment may not allow the assignee to control the member's exercise of governance rights.

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

(b) Subject to paragraph (c), a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

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

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

**History:** 1992 c 517 art 2 s 28; 1993 c 137 s 35

**322B.313 ASSIGNMENT OF GOVERNANCE RIGHTS.**

Subdivision 1. **Transfer of governance rights restricted.** A member's governance rights are assignable, in whole or in part, only as provided in this section.

Subd. 2. **When unanimous consent required.** Subject to subdivision 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Except as otherwise set forth in the articles of organization, any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent. 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.

Subd. 3. **Effect on membership.** When an assignment of governance rights is effective under subdivision 2:

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

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

**Subd. 4. Effect on liability for contributions and illegal distributions.** When an assignment other than a security interest is effective under subdivision 2, unless the written consent under subdivision 2 otherwise provides:

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

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

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

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

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

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

**Subd. 7. Foreclosure of security interest.** Notwithstanding any provision of law, articles of organization, member control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with chapter 336, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

**History:** 1992 c 517 art 2 s 29; 1993 c 137 s 36; 1996 c 361 s 16

### **322B.316 EFFECTIVE DATE OF ASSIGNMENTS.**

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

**History:** 1992 c 517 art 2 s 30; 1993 c 137 s 37

### **322B.32 RIGHTS OF JUDGMENT CREDITOR.**

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 322B.31. This chapter does not deprive any member or assignee of financial rights of the

benefit of any exemption laws applicable to the membership interest. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

**History:** 1992 c 517 art 2 s 31

### **322B.323 POWERS OF ESTATE OF A DECEASED OR INCOMPETENT MEMBER.**

Subdivision 1. **General rule.** If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the bankruptcy code is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. If a member is a corporation, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor.

Subd. 2. **When membership is terminated.** If an event referred to in subdivision 1 causes the termination of a member's membership interest and dissolution is avoided under section 322B.80, subdivision 1, clause (5), then:

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

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

**History:** 1992 c 517 art 2 s 32; 1993 c 137 s 38

### **322B.326 SHARING OF PROFITS AND LOSSES.**

Unless otherwise provided in the articles of organization or by the board of governors under section 322B.40, subdivisions 5 and 6, the profits and losses of a limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the required records.

**History:** 1992 c 517 art 2 s 33

### **322B.33 PREEMPTIVE RIGHTS.**

Subdivision 1. **Presumption and modification.** Unless denied or limited in the articles of organization or by the board of governors pursuant to section 322B.40, subdivision 5, clause (2), a member of a limited liability company has the preemptive rights provided in this section.

Subd. 2. **Definition.** A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the limited liability company may accept new contributions from other persons or to make contribution allowance agreements with other persons.

Subd. 3. **When right accrues.** A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.

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

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

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

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

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

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

**Subd. 5. Extent of preemptive right.** The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.

**Subd. 6. Waiver.** A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.

**Subd. 7. Notice.** When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board of governors shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:

(1) the extent of the member's preemptive right, being:

(i) in the case of a preemptive right to make a contribution, the amount of the contribution to be made, and

(ii) in the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;

(2) the method used to determine the extent of the member's preemptive right;

(3) the terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and

(4) the time within which and the method by which the member must exercise the right.

**Subd. 8. Contribution and participation by others.** If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board of governors for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board of governors may accept contributions or make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.

**Subd. 9. Modification.** If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization that has the effect of denying, limiting, or modifying the preemptive rights provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

**History:** 1992 c 517 art 2 s 34; 1996 c 361 s 17,18

### 322B.333 REGULAR MEETINGS OF MEMBERS.

**Subdivision 1. Frequency.** Regular meetings of members may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles of organization or operating agreement or by subdivision 2.

**Subd. 2. Demand by member.** If a regular meeting of members has not been held during the immediately preceding 15 months, a member or members owning three percent or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the chief manager or the treasurer of the limited liability company. Within 30 days after receipt of the demand by one of those managers, the board of governors shall cause a regular meeting of members to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the limited liability company. If the board of governors fails to cause a regular meeting to be called and held as required by this subdivision, the member or members making the demand may call the regular meeting by giving notice as required by section 322B.34, all at the expense of the limited liability company.

**Subd. 3. Time and place.** A regular meeting, if any, must be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles or operating agreement, except that a meeting called by or at the demand of a member pursuant to subdivision 2 must be held in the county where the principal executive office of the limited liability company is located.

**Subd. 4. Elections required and other business.** At each regular meeting of members there must be an election of qualified successors for governors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the members may be transacted at a regular meeting.

**History:** 1992 c 517 art 2 s 35

### 322B.336 SPECIAL MEETINGS OF MEMBERS.

Subdivision 1. **Who may call.** Special meetings of the members may be called for any purpose or purposes at any time, by:

- (1) the chief manager;
- (2) the treasurer;
- (3) two or more governors;
- (4) a person authorized in the articles or operating agreement to call special meetings; or
- (5) a member or members owning ten percent or more of the voting power of all membership interests entitled to vote.

**Subd. 2. Demand by members.** A member or members owning the voting power specified in subdivision 1, clause (5), may demand a special meeting of members by written notice of demand given to the chief manager or treasurer of the limited liability company and containing the purposes of the meeting. Within 30 days after receipt of the demand by one of those managers, the board of governors shall cause a special meeting of members to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the limited liability company. If the board of governors fails to cause a special meeting to be called and held as required by this subdivision, the member or members making the demand may call the meeting by giving notice as required by section 322B.34, all at the expense of the limited liability company.

**Subd. 3. Time and place.** Special meetings must be held on the date and at the time and place fixed by the chief manager, the treasurer, the board of governors, or a person authorized by the articles or operating agreement to call a meeting, except that a special meeting called by or at the demand of a member or members pursuant to subdivision 2 must be held in the county where the principal executive office is located.

**Subd. 4. Business limited.** The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the limited liability company, unless all of the members have waived notice of the meeting in accordance with section 322B.34, subdivision 4.

**History:** 1992 c 517 art 2 s 36

### 322B.34 NOTICE.

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

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

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

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

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

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

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

**Subd. 2. When given.** In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization or operating agreement, and not more than 60 days before the date of the meeting.

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

**Subd. 4. Waiver and objections.** A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

**History:** 1992 c 517 art 2 s 37; 1996 c 361 s 19,20

### 322B.343 ELECTRONIC COMMUNICATIONS.

**Subdivision 1. Electronic conferences.** If and to the extent authorized in the operating agreement or by the board of governors of a closely held limited liability company, a conference among members by any means of communication through which the members may simultaneously hear each other during the conference constitutes a regular or special meeting of members, if the same notice is given of the conference to every owner of membership interests entitled to vote as would be required by this chapter for a meeting, and if the membership interests held by the members participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

**Subd. 2. Participation by electronic means.** If and to the extent authorized in the operating agreement or by the board of governors of a closely held limited liability company, a member may participate in a regular or special meeting of members not described in subdivision 1 by any means of communication through which the member, other members so participating, and all members physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 322B.363 are met.

**Subd. 3. Waiver.** Waiver of notice of a meeting by means of communication described in subdivisions 1 and 2 may be given in the manner provided in section 322B.34, subdivision 4. Participation in a meeting by means of communication described in subdivisions 1 and 2 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be



considered at the meeting and does not participate in the consideration of the item at that meeting.

**History:** 1992 c 517 art 2 s 38

### **322B.346 ACT OF MEMBERS.**

Subdivision 1. **Majority required.** The members shall take action by the affirmative vote of the owners of the greater of: (1) a majority of the voting power of the membership interests present and entitled to vote on that item of business; or (2) a majority of the voting power that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles of organization require a larger proportion. If the articles require a larger proportion than is required by this chapter for a particular action, the articles control.

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

**History:** 1992 c 517 art 2 s 39; 1996 c 361 s 21

### **322B.35 ACTION WITHOUT A MEETING.**

Subdivision 1. **Method.** An action required or permitted to be taken at a meeting of the members may be taken by written action signed by all of the members. If the articles so provide, any action may be taken by written action signed by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

Subd. 2. **Effective time.** The written action is effective when signed by the required members, unless a different effective time is provided in the written action.

Subd. 3. **Notice and liability.** When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

**History:** 1992 c 517 art 2 s 40

### **322B.353 QUORUM.**

The owners of a majority of the voting power of the membership interests entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion is provided in the articles or operating agreement. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of members originally present leaves less than the proportion otherwise required for a quorum.

**History:** 1992 c 517 art 2 s 41

### **322B.356 VOTING RIGHTS.**

Subdivision 1. **Determination.** The board of governors may 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.

Subd. 2. **Voting power.** Unless otherwise provided in the articles or by the board of governors under section 322B.40, subdivisions 5 and 6, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.

Subd. 3. **Nonmembers.** The articles of organization may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this section, but no prescription under this subdivision may have the effect of transferring from an assignor of financial rights to the assignee the assignor's voting rights.

Subd. 4. **Jointly owned membership interests.** Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from any one of them denying the authority of that person to vote those membership interests.

Subd. 5. **Manner of voting and presumption.** Except as provided in subdivision 4, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

**History:** 1992 c 517 art 2 s 42

### 322B.36 VOTING BY ORGANIZATIONS AND LEGAL REPRESENTATIVES.

Subdivision 1. **Membership interests held by another organization.** Membership interests of a limited liability company reflected in the required records as being owned by another domestic or foreign organization may be voted by the chief manager, chief executive officer, or another legal representative of that organization.

Subd. 2. **Membership interests held by subsidiary.** Except as provided in subdivision 3, membership interests of a limited liability company reflected in the required records as being owned by a subsidiary are not entitled to be voted on any matter.

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

Subd. 4. **Voting by certain representatives.** Subject to section 322B.323, membership interests under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or the like may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.

Subd. 5. **Voting by trustee in bankruptcy or receiver.** Membership interests reflected in the required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required records the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed. The right to vote of trustees in bankruptcy and receivers is subject to section 322B.323.

Subd. 6. **Membership interests held by other organizations.** Membership interests reflected in the required records in the name of an organization not described in subdivisions 1 to 5 may be voted either in person or by proxy by the legal representative of that organization.

Subd. 7. **Grant of security interest.** The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote except as provided in section 322B.313.

**History:** 1992 c 517 art 2 s 43; 1996 c 361 s 22,23

**322B.363 PROXIES.**

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 reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or otherwise authorized by any one of them, unless the limited liability company receives from any one of those members written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

Subd. 2. **Duration.** The appointment of a proxy is valid for 11 months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable and any agreement purporting to grant an irrevocable proxy is void. A member who revokes a proxy is not liable in any way for damages, restitution, or other claim.

Subd. 3. **Termination.** An appointment may be terminated at will. Termination may be made by filing written notice of the termination of the appointment with a manager of the limited liability company, or by filing a new written appointment of a proxy with a manager of the limited liability company. Termination in either manner revokes all prior proxy appointments and is effective when filed with a manager of the limited liability company.

Subd. 4. **Revocation by death or incapacity.** The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by a manager of the limited liability company before the proxy exercises the authority under that appointment.

Subd. 5. **Multiple proxies.** Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:

(1) any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment; and

(2) if no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of business, the membership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, the membership interests must not be voted.

Subd. 6. **Vote of proxy accepted and liability.** Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the limited liability company may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

Subd. 7. **Limited authority.** If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy for purposes of section 322B.346, subdivision 1, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subdivision.

Subd. 8. **Limitations on proxies.** A member may not grant any proxy to any person who is an assignee of any member's financial rights and who is not also a member.

**History:** 1992 c 517 art 2 s 44; 1996 c 361 s 24

**322B.366 MEMBER VOTING AGREEMENTS.**

Subdivision 1. **General rule.** Except as provided in subdivision 2, a written agreement among persons who are then members or who have signed contribution agreements, relating

to the voting of their membership interests, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 322B.363, subdivisions 1 to 7, regarding proxies.

**Subd. 2. Limitation on voting agreements.** Any assignee of any member's financial rights may not be a party to an agreement under subdivision 1, unless that assignee is also a member. A voting agreement may not relate to the consents referred to in section 322B.80, subdivision 1, clause (5); 322B.313, subdivision 2; 322B.42, subdivision 5; or 322B.43, subdivision 3.

**History:** 1992 c 517 art 2 s 45

### **322B.37 MEMBER CONTROL AGREEMENTS.**

**Subdivision 1. Authorization and scope.** A written agreement among persons who are then members 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 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.

**Subd. 2. Method of approval.** A written agreement among persons described in subdivision 1 that relates to the control of or the liquidation, dissolution and termination of the limited liability company, the relations among them, or any phase of the business and affairs of the limited liability company, including, without limitation, the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of governors or managers, the employment of members by the limited liability company, or the arbitration of disputes, is valid, if the agreement is signed by all persons who are then the members of the limited liability company, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power. An agreement authorized under this section may allocate to the members authority ordinarily exercised by the board of governors, allocate to the board of governors authority ordinarily exercised by the members, or structure the governance of the limited liability company in any agreed fashion.

**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.

**Subd. 4. Liability.** If an agreement authorized under this section takes away from any person any of the authority and responsibility which that person would otherwise possess under this chapter, the effect of the agreement is also to relieve that person of liability im-

posed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.

Subd. 5. **Other agreements.** This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

**History:** 1992 c 517 art 2 s 46

### 322B.373 REQUIRED RECORDS AND INFORMATION.

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

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

- (14) an explanation of any restatement of value made under section 322B.41;
- (15) any written consents obtained from members under this chapter;
- (16) a copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under section 322B.40, subdivision 6.

**Subd. 2. Right to inspect.** (a) A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all documents referred to in subdivision 1.

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

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

**Subd. 3. Protective orders.** On application of the limited liability company, a court in this state may issue a protective order permitting the limited liability company to withhold portions of the records of proceedings of the board of governors for a reasonable period of time, not to exceed 12 months, in order to prevent premature disclosure of confidential information that would be likely to cause competitive injury to the limited liability company. A protective order may be renewed for successive reasonable periods of time, each not to exceed 12 months and in total not to exceed 36 months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action that the member might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the limited liability company, it shall award reasonable expenses, including attorney's fees and disbursements, to the member. This subdivision does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the limited liability company records that may be copied or examined under subdivision 2 or the use or distribution of the records by the demanding member.

**Subd. 4. Other use prohibited.** A member who has gained access under this section to any limited liability company record may not use or furnish to another for use the limited liability company record or a portion of the contents for any purpose other than a proper purpose. Upon application of the limited liability company, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subdivision.

**Subd. 5. Cost of copies.** Copies of the information referred to in subdivision 1 must be furnished at the expense of the limited liability company. In all other cases, the limited liability company may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

**Subd. 6. Computerized records.** The records maintained by a limited liability company may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or micro-images, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A limited liability company shall convert any of the records referred to in subdivision 2 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subdivision 5. A copy of the conversion is admissible in evidence, and is acceptable for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

**History:** 1992 c 517 art 2 s 47; 1993 c 137 s 39; 1996 c 361 s 25

### **322B.376 FINANCIAL STATEMENTS.**

(a) A limited liability company shall prepare annual financial statements within 180 days after the close of the limited liability company's fiscal year. The financial statements must include at least a balance sheet as of the end of each fiscal year and a statement of in-

come for the fiscal year, prepared on the basis of accounting methods reasonable in the circumstances. The financial statements may be consolidated statements of the limited liability company and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy must be accompanied by a statement of the treasurer or other person in charge of the limited liability company's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

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

**History:** 1992 c 517 art 2 s 48; 1996 c 361 s 26

### 322B.38 EQUITABLE REMEDIES.

If a limited liability company or a manager or governor of the limited liability company violates a provision of this chapter, a court in this state may, in an action brought by a member of the limited liability company, grant any equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the member.

**History:** 1992 c 517 art 2 s 49

### 322B.383 RIGHTS OF DISSENTING MEMBERS.

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;
- (vii) changes the statement required under section 322B.115, subdivision 1, clause (5);
- (viii) changes the statement required under section 322B.115, subdivision 1, clause (6);

or

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

**Subd. 2. Other rights.** The members of a limited liability company who have a right under this section to obtain payment for their membership interests do not have a right at law or in equity to have a limited liability company action described in subdivision 1 set aside or rescinded, except when the limited liability company action is fraudulent with regard to the complaining member or the limited liability company.

**History:** 1992 c 517 art 2 s 50; 1996 c 361 s 27

### **322B.386 PROCEDURES FOR ASSERTING DISSENTERS' RIGHTS.**

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

(b) "Limited liability company" means a limited liability company whose members have obtained rights to dissent under section 322B.383, subdivision 1, and includes any successor by merger.

(c) "Fair value of the membership interests" means the value of the membership interests of a limited liability company immediately before the effective date of the limited liability company action referred to in section 322B.383, subdivision 1.

(d) "Interest" means interest beginning five days after the effective date of the limited liability company action referred to in section 322B.383, subdivision 1, up to and including the date of payment, calculated at the rate provided in section 549.09 for interest on verdicts and judgments.

(e) "Member" includes a former member when dissenters' rights exist because:

(1) the membership of that former member has terminated causing dissolution; and

(2) the dissolved limited liability company has then either entered into a winding up merger under section 322B.81, subdivision 3, or has disposed of its assets pursuant to a business continuation agreement under section 322B.873, subdivision 2.

**Subd. 2. Notice of action.** If a limited liability company calls a member meeting at which any action described in section 322B.383, subdivision 1, is to be voted upon, the notice of the meeting must inform each member of the right to dissent and must include a copy of section 322B.383 and this section, and if applicable, sections 322B.873, subdivisions 2 and 3, and a brief description of the procedure to be followed under these sections. For members who have assigned some or all of their financial rights, the description must also include the procedures under subdivision 9.

**Subd. 3. Notice of dissent.** If the proposed action must be approved by the members, a member 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.

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

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



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

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

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

**Subd. 5. Payment.** (a) After the limited liability company action takes effect, or after the limited liability company receives a valid demand for payment, whichever is later, the limited liability company shall remit to each dissenting member who has complied with subdivisions 3 and 4 the amount the limited liability company estimates to be the fair value of the membership interests, plus interest, accompanied by:

(1) the limited liability company's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the effective date of the limited liability company action, together with the latest available interim financial statements;

(2) an estimate by the limited liability company of the fair value of the membership interests and a brief description of the method used to reach the estimate; and

(3) a copy of section 322B.383, this section, and, if applicable, section 322B.873, subdivisions 2 and 3, and a brief description of the procedure to be followed in demanding supplemental payment.

(b) The limited liability company may withhold the remittance described in paragraph (a) from a person who was not a member on the date the action dissented from was first announced to the public. If the dissenter has complied with subdivisions 3 and 4, the limited liability company shall forward to the dissenter the materials described in paragraph (a), a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subdivision 6. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subdivisions 7 and 8 apply.

**Subd. 6. Supplemental payment.** If a dissenter believes that the amount remitted under subdivision 5 is less than the fair value of the membership interests plus interest, the dissenter may give written notice to the limited liability company of the dissenter's own estimate of the fair value of the membership interests, plus interest, within 30 days after the limited liability company mails the remittance under subdivision 5, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the limited liability company.

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

by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the limited liability company or by a dissenter. The fair value of the membership interests as determined by the court is binding on all members, wherever located. A dissenter is entitled to judgment in cash for the amount by which the fair value of the membership interests as determined by the court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but is not liable to the limited liability company for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the membership interests as determined by the court, plus interest.

**Subd. 8. Costs, fees and expenses.** (a) The court shall determine the costs and expenses of a proceeding under subdivision 7, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the limited liability company, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subdivision 6 is found to be arbitrary, vexatious, or not in good faith.

(b) If the court finds that the limited liability company has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court considers equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

(c) The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

**Subd. 9. Procedures as to assignees of financial rights.** When an assignment of some or all of the financial rights of a membership interest is in effect, then as to that membership interest the provisions of subdivisions 1 to 8 must be followed subject to the following revisions.

(a) All rights to be exercised and actions to be taken by a member under subdivisions 2 to 8 shall be taken by the member and not by any assignee of the member's financial rights. As between the limited liability company and the assignees, the actions taken or omitted by the member bind the assignees.

(b) Instead of remitting a payment under subdivision 5, paragraph (a), the limited liability company shall forward to the dissenter member:

(i) the materials described in subdivision 5, paragraph (a);

(ii) an offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and

(iii) a statement of that allocation.

(c) If the dissenter member accepts the amount of the offer made under paragraph (b) but disputes the allocation, the dissenter shall promptly so notify the limited liability company and promptly after the notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the limited liability company is located, or in the case of a surviving foreign corporation that is complying with this section following a merger or an exchange with a constituent limited liability company the suit must be filed in the county in this state in which the last registered office of the constituent limited liability company was located. The suit must name as parties the member, the limited liability company and all assignees of the member's financial rights. Upon being served with the action, the limited liability company shall promptly pay into the court the amount offered under paragraph (b) and shall then be dismissed from the action.

(d) If the dissenter considers the amount offered under paragraph (b) inadequate, the dissenter may decline the offer and demand payment under subdivision 6. If the dissenter makes demand, subdivisions 7 and 8 apply, with the court having jurisdiction also to determine the correctness of the allocation.

(e) If the member fails to take action under either paragraph (c) or (d), then:

(i) as to the limited liability company, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under paragraph (b); and

(ii) the limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under paragraph (b).

**History:** 1992 c 517 art 2 s 51; 1996 c 361 s 28,29

## CONTRIBUTIONS

### 322B.40 AUTHORIZATION, FORM AND ACCEPTANCE OF CONTRIBUTIONS.

Subdivision 1. **Board of governors may authorize.** Subject to any restrictions in the articles of organization and only when authorized by the board of governors, a limited liability company may accept contributions under subdivisions 2 and 3, make contribution agreements under section 322B.42, and make contribution allowance agreements under section 322B.43.

Subd. 2. **Permissible forms.** A person may make a contribution to a limited liability company:

(1) by paying money or transferring the ownership of an interest in property to the limited liability company, or rendering services to or for the benefit of the limited liability company; or

(2) through a written obligation signed by the person to pay money or transfer ownership of an interest in property to the limited liability company or to perform services to or for the benefit of the limited liability company.

Subd. 3. **Acceptance of contributions.** No purported contribution is to be treated or considered as a contribution, unless:

(1) the board of governors accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution, including terms of future performance, if any, and states the value being accorded to the contribution; and

(2) the fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.

Subd. 4. **Valuation.** The determinations of the board of governors as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 322B.42, and a contribution allowance agreement in section 322B.43, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subdivision, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subdivision.

Subd. 5. **Terms of membership interests.** All the membership interests of a limited liability company must:

(1) be of one class, without series, unless the articles of organization establish, or authorize the board of governors to establish, more than one class or series within classes;

(2) be ordinary membership interests entitled to vote as provided in section 322B.356, and have equal rights and preferences in all matters not otherwise provided for by the board of governors unless and to the extent that the articles of organization have fixed the relative rights and preferences of different classes and series; and

(3) share profits and losses as provided in section 322B.326, and be entitled to distributions as provided in sections 322B.50, 322B.51, and 322B.873, subdivision 1, clause (3).

Subd. 6. **Procedure for fixing terms.** (a) Subject to any restrictions in the articles of organization, the power granted in subdivision 5 may be exercised by a resolution or resolu-

tions 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 of organization or by resolution of the board of governors:

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

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

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

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

**Subd. 7. Specific terms.** Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:

(1) subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board of governors;

(2) entitling the members to cumulative, partially cumulative, or noncumulative distributions;

(3) having preference over any class or series of membership interests for the payment of distributions of any or all kinds;

(4) convertible into membership interests of any other class or any series of the same or another class; or

(5) having full, partial, or no voting rights, except as provided in section 322B.155.

**History:** 1992 c 517 art 2 s 52; 1996 c 361 s 30

### **322B.41 RESTATEMENT OF VALUE OF PREVIOUS CONTRIBUTIONS.**

Subdivision 1. **Definition.** As used in this section, an "old" contribution is a contribution reflected in the required records of a limited liability company before the time the limited liability company accepts a new contribution.

Subd. 2. **Restatement required.** Whenever a limited liability company accepts a new contribution, the board shall restate, as required by this section, the value of all old contributions.

Subd. 3. **Restatement as to the particular series or class to which the new contribution pertains.** Unless otherwise provided in the articles of organization, this subdivision states the method of restating the value of old contributions that pertain to the same series or class to which the new contribution pertains:

(1) state the value the limited liability company has accorded to the new contribution under section 322B.40, subdivision 3, clause (1);

(2) determine what percentage the value stated under clause (1) will constitute, after the restatement required by this subdivision, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains;

(3) divide the value stated under clause (1) by the percentage determined under clause (2), yielding the total value, after the restatement required by this subdivision, of all contributions pertaining to the particular series or class;

(4) subtract the value stated under clause (1) from the value determined under clause (3), yielding the total value, after the restatement required by this subdivision, of all the old contributions pertaining to the particular series or class;

(5) subtract the value, as reflected in the required records before the restatement required by this subdivision, of the old contributions from the value determined under clause (4), yielding the value to be allocated among and added to the old contributions pertaining to the particular series or class; and

(6) allocate the value determined under clause (5) proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the required records accordingly.

The values determined under clause (5) and allocated and added under clause (6) may be positive, negative, or zero.

**Subd. 4. Restatement method for other series or classes.** Unless otherwise provided in the articles of organization, this subdivision states the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains;

(1) determine the percentage by which the restatement under subdivision 3 has changed the total contribution value reflected in the required records for the series or class to which the new contribution pertains; and

(2) as to each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the required records by the percentage determined under clause (1). The percentage determined under clause (1) may be positive, negative, or zero.

**Subd. 5. New contributions may be aggregated.** If a limited liability company accepts more than one contribution pertaining to the same series or class at the same time, then for the purpose of the restatement required by this section the limited liability company may consider all those new contributions as if they were a single contribution.

**History:** 1992 c 517 art 2 s 53

### 322B.42 CONTRIBUTION AGREEMENTS.

**Subdivision 1. Signed writing.** A contribution agreement, whether made before or after the formation of the limited liability company, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.

**Subd. 2. Irrevocable period.** Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the limited liability company, consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months.

**Subd. 3. Current and deferred payment.** A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board of governors, but a call made by the board of governors for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

**Subd. 4. Failure to pay remedies.** (a) Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the limited liability company may proceed to collect the amount due in the same manner as a debt due the limited liability company. If a would-be contributor does not make a

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

(b) If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the limited liability company for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale.

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

(c) If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor and the membership interests that were subject to the defaulted contribution agreement have not been sold according to paragraph (b), the limited liability company may cancel the contribution agreement, the limited liability company may retain the portion of the contribution agreement price actually paid that does not exceed ten percent of the contribution agreement, and the limited liability company shall refund to the delinquent would-be contributor or the delinquent would-be contributor's legal representatives that portion of the contribution agreement price actually paid that exceeds ten percent of the contribution agreement price.

**Subd. 5. Restrictions on assignment.** A would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

**History:** 1992 c 517 art 2 s 54; 1996 c 361 s 31,32

### **322B.43 CONTRIBUTION ALLOWANCE AGREEMENTS.**

**Subdivision 1. Agreements permitted.** Subject to any restrictions in the articles of organization, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors.

**Subd. 2. Writing required and terms to be stated.** Any contribution allowance agreement must be in writing, and the writing must state in full, summarize, or incorporate by reference all the agreement's terms, provisions, and conditions.

**Subd. 3. Restrictions on assignment.** A would-be contributor's rights under a contribution allowance agreement may not be assigned in whole or in part to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

**History:** 1992 c 517 art 2 s 55

## **DISTRIBUTIONS**

### **322B.50 SHARING OF DISTRIBUTIONS.**

Unless otherwise provided in the articles of organization or by the board of governors under section 322B.40, subdivisions 5 and 6, distributions of cash or other assets of a limited liability company, including distributions on termination of the limited liability company,

must be allocated in proportion to the value of the contributions of the members reflected in the required records.

**History:** 1992 c 517 art 2 s 56

### 322B.51 INTERIM DISTRIBUTIONS.

Except as provided in the articles of organization, a member is entitled to receive distributions before the limited liability company's termination only as specified in the operating agreement or by the act of the board of governors.

**History:** 1992 c 517 art 2 s 57

### 322B.52 DISTRIBUTION IN KIND.

Except as provided in the articles of organization, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in the articles of organization, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

**History:** 1992 c 517 art 2 s 58

### 322B.53 STATUS AS A CREDITOR.

At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

**History:** 1992 c 517 art 2 s 59

### 322B.54 LIMITATIONS ON DISTRIBUTION.

**Subdivision 1. When distributions are permitted.** (a) The board of governors may authorize and cause the limited liability company to make a distribution only if the board of governors determines, in accordance with subdivision 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board of governors does not know before the distribution is made that the determination was or has become erroneous.

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

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

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

**Subd. 2. Determination presumed proper.** A determination that the limited liability company will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 322B.663 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 322B.663 or 322B.56 will accrue if the requirements of this subdivision have been met.

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

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

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

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

**Subd. 4. Restrictions.** (a) A distribution may be made to the owners of a class or series of membership interests only if:

(1) all amounts payable to the owners of membership interests having a preference for the payment of that kind of distribution, other than those owners who give notice to the limited liability company of their agreement to waive their rights to that payment, are paid; and

(2) the payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of liquidation to the owners of membership interests having preferential rights, unless the distribution is made to those members in the order and to the extent of their respective priorities or the owners of membership interests who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

A determination that the payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of termination to the owners of membership interests having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 322B.663 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. Liability under section 322B.663 or 322B.56 will not arise if the requirements of this paragraph are met.

(b) If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes unless those owners who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

**History:** 1992 c 517 art 2 s 60; 1993 c 137 s 40; 1996 c 361 s 33

### **322B.55 LIABILITY OF MEMBERS FOR ILLEGAL DISTRIBUTIONS.**

**Subdivision 1. Liability.** A member who receives a distribution made in violation of section 322B.54 is liable to the limited liability company, its receiver or other person winding up its affairs, or a governor under section 322B.56, subdivision 2, but only to the extent that the distribution received by the member exceeded the amount that properly could have been paid under section 322B.54.

**Subd. 2. Statute of limitations.** An action must not be commenced under this section more than two years from the date of the distribution.

**History:** 1992 c 517 art 2 s 61

### **322B.56 LIABILITY OF GOVERNORS FOR ILLEGAL DISTRIBUTIONS.**

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



liable and to other governors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 322B.54.

**Subd. 2. Contribution from members.** A governor against whom an action is brought under this section with respect to a distribution may implead in that action all members who received the distribution and may compel pro rata contribution from them in that action to the extent provided in section 322B.55, subdivision 1.

**Subd. 3. Impleader and contribution from governors.** A governor against whom an action is brought under this section with respect to a distribution may implead in that action all other governors who voted for or consented in writing to the distribution and may compel pro rata contribution from them in that action.

**Subd. 4. Statute of limitations.** An action must not be commenced under this section more than two years from the date of the distribution.

**History:** 1992 c 517 art 2 s 62; 1996 c 361 s 34

## ORGANIZATION AND GOVERNANCE

### 322B.60 ORGANIZATION.

**Subdivision 1. Role of organizers.** If the first board of governors is not named in the articles of organization, the organizers may elect the first board of governors or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.

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

**History:** 1992 c 517 art 2 s 63; 1996 c 361 s 35

### 322B.603 OPERATING AGREEMENT.

**Subdivision 1. Generally.** A limited liability company may, but need not, have an operating agreement. The operating agreement may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with law or the articles of organization. An act of the board under subdivision 2 and of the members under subdivision 3 will be considered part of the operating agreement only if the act expressly states that it is intended to constitute or revise the operating agreement.

**Subd. 2. Power of board of governors.** An initial operating agreement may be adopted pursuant to section 322B.60 by the organizers or by the first board of governors. Unless reserved by the articles of organization to the members, the power to adopt, amend, or repeal the operating agreement is vested in the board of governors. The power of the board of governors is subject to the power of the members, exercisable in the manner provided in subdivision 3, to adopt, amend, or repeal the operating agreement adopted, amended, or repealed by the board of governors. After the adoption of the initial operating agreement, the board of governors shall not adopt, amend, or repeal an operating agreement provision fixing a quo-

rum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or their classifications, qualifications, or terms of office, but may adopt or amend an operating agreement provision to increase the number of governors.

**Subd. 3. Power of members and procedure.** If a member or members owning three percent or more of the voting power of the members entitled to vote propose a resolution for action by the members to adopt, amend, or repeal operating agreement provisions adopted, amended, or repealed by the board of governors and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 322B.15, subdivisions 2 to 4, for amendment of the articles of organization.

**History:** 1992 c 517 art 2 s 64

## BOARD OF GOVERNORS

### 322B.606 BOARD OF GOVERNORS.

**Subdivision 1. Board of governors to manage.** The business and affairs of a limited liability company is to be managed by or under the direction of a board of governors, subject to the provisions of subdivision 2 and section 322B.37. The first board of governors may be named in the articles of organization or elected by the organizers pursuant to section 322B.60 or by the members.

**Subd. 2. Member management.** The owners of the membership interests entitled to vote for governors of the limited liability company may, by unanimous affirmative vote, take any action that this chapter requires or permits the board of governors to take. As to an action taken by the members in that manner:

(1) the governors have no duties, liabilities, or responsibilities as governors under this chapter with respect to or arising from the action;

(2) the members collectively and individually have all of the duties, liabilities, and responsibilities of governors under this chapter with respect to and arising from the action;

(3) if the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board of governors, either with or without approval or adoption by the members, the action is considered to have been approved or adopted by the board of governors; and

(4) a requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board of governors is satisfied by a statement that the members have taken the action under this subdivision.

**History:** 1992 c 517 art 2 s 65

### 322B.61 NUMBER.

The board of governors consists of one or more governors. The number of governors must be fixed by or in the manner provided in the articles of organization or the operating agreement. The number of governors may be increased or, subject to section 322B.636, decreased at any time by amendment to or in the manner provided in the articles or operating agreement.

**History:** 1992 c 517 art 2 s 66

### 322B.613 QUALIFICATIONS AND ELECTION.

Governors must be natural persons. The method of election and any additional qualifications for governors may be imposed by or in the manner provided in the articles or operating agreement.

**History:** 1992 c 517 art 2 s 67

### 322B.616 TERMS.

Unless fixed terms are provided for in the articles or operating agreement, a governor serves for an indefinite term that expires at the next regular meeting of the members. A fixed

term of a governor must not exceed five years. A governor holds office for the term for which the governor was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the governor.

**History:** 1992 c 517 art 2 s 68

### **322B.62 ACTS NOT VOID OR VOIDABLE.**

The expiration of a governor's term with or without the election of a qualified successor does not make prior or subsequent acts of the governors or the board of governors void or voidable.

**History:** 1992 c 517 art 2 s 69

### **322B.623 COMPENSATION.**

Subject to any limitations in the articles or operating agreement, the board of governors may fix the compensation of governors.

**History:** 1992 c 517 art 2 s 70

### **322B.626 CLASSIFICATION OF GOVERNORS.**

Governors may be divided into classes as provided in the articles or operating agreement.

**History:** 1992 c 517 art 2 s 71

### **322B.63 CUMULATIVE VOTING FOR GOVERNORS.**

Subdivision 1. **Voting rights.** Unless the articles of organization provide that there is no cumulative voting, and except as provided in section 322B.636, subdivision 5, each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting, or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:

(1) the presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and

(2) each member shall cumulate that voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.

Subd. 2. **Modifications.** No amendment to the articles or operating agreement that has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

**History:** 1992 c 517 art 2 s 72

### **322B.633 RESIGNATION.**

A governor may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective time is specified in the notice.

**History:** 1992 c 517 art 2 s 73

### **322B.636 REMOVAL OF GOVERNORS.**

Subdivision 1. **Modification.** The provisions of this section apply unless modified by the articles of organization or the operating agreement.

Subd. 2. **Removal of governors.** A governor may be removed at any time, with or without cause, if:

- (1) the governor was named by the board of governors to fill a vacancy;
- (2) the members have not elected governors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
- (3) a majority of the remaining governors present affirmatively vote to remove the governor.

Subd. 3. **Removal by members.** Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of the proportion of the voting power of the membership interests of the classes or series the governor represents sufficient to elect them, except as provided in subdivision 4.

Subd. 4. **Exception for limited liability companies with cumulative voting.** In a limited liability company having cumulative voting, unless the entire board of governors is removed simultaneously, a governor is not removed from the board of governors if there are cast against removal of the governor the votes of a proportion of the voting power sufficient to elect the governor at an election of the entire board of governors under cumulative voting.

Subd. 5. **Election of replacements.** New governors may be elected at a meeting at which governors are removed. If the limited liability company allows cumulative voting and a member notifies the presiding manager at any time before the election of new governors of intent to cumulate the votes of the member, the presiding manager shall announce before the election that cumulative voting is in effect, and members shall cumulate their votes as provided in section 322B.63, subdivision 1, clause (2).

**History:** 1992 c 517 art 2 s 74

### 322B.64 VACANCIES.

Unless different rules for filling vacancies are provided for in the articles or operating agreement:

(1)(i) vacancies on the board of governors resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and

(ii) vacancies on the board of governors resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase; and

(2) each governor elected under this section to fill a vacancy holds office until a qualified successor is elected by the members at the next regular or special meeting of the members.

**History:** 1992 c 517 art 2 s 75

### 322B.643 BOARD OF GOVERNORS MEETINGS.

Subdivision 1. **Time and place.** Meetings of the board of governors may be held from time to time as provided in the articles of organization or operating agreement at any place within or without the state that the board of governors may select or by any means described in subdivision 2. If the board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or operating agreement provide otherwise.

Subd. 2. **Electronic communications.** (a) A conference among governors by any means of communication through which the governors may simultaneously hear each other during the conference constitutes a board of governors meeting, if the same notice is given of the conference as would be required by subdivision 3 for a meeting, and if the number of governors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

(b) A governor may participate in a board of governors meeting not described in paragraph (a) by any means of communication through which the governor, other governors so participating, and all governors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

Subd. 3. **Calling meetings and notice.** Unless the articles of organization or operating agreement provide for a different time period, a governor may call a board meeting by giving at least ten days notice or, in the case of organizational meetings under section 322B.60, subdivision 2, at least three days notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or operating agreement require it.

Subd. 4. **Previously scheduled meetings.** If the day or date, time, and place of a board of governors meeting have been provided in the articles or operating agreement, or announced at a previous meeting of the board of governors, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Subd. 5. **Waiver of notice.** A governor may waive notice of a meeting of the board of governors. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except where the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

**History:** 1992 c 517 art 2 s 76; 1996 c 361 s 36

#### **322B.646 ABSENT GOVERNORS.**

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

**History:** 1992 c 517 art 2 s 77; 1996 c 361 s 37

#### **322B.65 QUORUM.**

A majority, or a larger or smaller proportion or number provided in the articles of organization or operating agreement, of the governors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the governors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the governors present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

**History:** 1992 c 517 art 2 s 78

#### **322B.653 ACT OF THE BOARD OF GOVERNORS.**

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

**History:** 1992 c 517 art 2 s 79; 1996 c 361 s 38

#### **322B.656 ACTION WITHOUT A MEETING.**

Subdivision 1. **Method.** An action required or permitted to be taken at a board of governors meeting may be taken by written action signed by all of the governors. If the articles so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of governors that would be required to take the same action at a meeting of the board of governors at which all governors were present.

Subd. 2. **Effective time.** The written action is effective when signed by the required number of governors, unless a different effective time is provided in the written action.

Subd. 3. **Notice and liability.** When written action is permitted to be taken by less than all governors, all governors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

**History:** 1992 c 517 art 2 s 80

### 322B.66 COMMITTEES.

Subdivision 1. **Generally.** A resolution approved by the affirmative vote of a majority of the board of governors may establish committees having the authority of the board in the management of the business of the limited liability company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent governors or other independent persons to consider legal rights or remedies of the limited liability company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board of governors.

Subd. 2. **Membership.** Committee members must be natural persons. Unless the articles or operating agreement provide for a different membership or manner of appointment, a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present.

Subd. 3. **Procedure.** Sections 322B.643 to 322B.656 apply to committees and members of committees to the same extent as those sections apply to the board of governors and governors.

Subd. 4. **Minutes.** Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any governor.

Subd. 5. **Standard of conduct.** The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a governor with the standard of conduct set forth in section 322B.663.

Subd. 6. **Committee members considered governors.** Committee members are considered to be governors for purposes of sections 322B.663, 322B.666, and 322B.699.

**History:** 1992 c 517 art 2 s 81

### 322B.663 STANDARD OF CONDUCT.

Subdivision 1. **Standard and liability.** A governor shall discharge the duties of the position of governor in good faith, in a manner the governor reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a governor of the limited liability company.

Subd. 2. **Reliance.** (a) A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) one or more managers or employees of the limited liability company whom the governor reasonably believes to be reliable and competent in the matters presented;

(2) counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of governors upon which the governor does not serve, duly established in accordance with section 322B.66, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.

(b) Paragraph (a) does not apply to a governor who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

Subd. 3. **Presumption of assent and dissent.** A governor who is present at a meeting of the board of governors when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:

(1) objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;

(2) votes against the action at the meeting; or

(3) is prohibited by section 322B.666 from voting on the action.

**Subd. 4. Elimination or limitation of liability.** 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 of organization. The articles may not eliminate or limit the liability of a governor:

(1) for any breach of the governor's duty of loyalty to the limited liability company or its members;

(2) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(3) under section 80A.23 or 322B.56;

(4) for any transaction from which the governor derived an improper personal benefit;

or  
(5) for any act or omission occurring before the date when the provision in the articles of organization eliminating or limiting liability becomes effective.

**Subd. 5. Considerations.** In discharging the duties of the position of governor, a governor may, in considering the best interests of the limited liability company, consider the interests of the limited liability company's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the limited liability company and its members including the possibility that these interests may be best served by the continued independence of the limited liability company.

**History:** 1992 c 517 art 2 s 82

### **322B.666 GOVERNOR CONFLICTS OF INTEREST.**

**Subdivision 1. Conflict and procedure when conflict arises.** A contract or other transaction between a limited liability company and one or more of its governors, or between a limited liability company and an organization in or of which one or more of its governors are governors, directors, managers, officers, or legal representatives or have a material financial interest, is not void or voidable because the governor or governors or the other organizations are parties or because the governor or governors are present at the meeting of the members or the board of governors or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(1) the contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;

(2) the material facts as to the contract or transaction and as to the manager's or managers' interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by (i) the owners of two-thirds of the voting power of the membership interests entitled to vote that are owned by persons other than the interested governor or governors, or (ii) the unanimous affirmative vote of all members, whether or not entitled to vote;

(3) the material facts as to the contract or transaction and as to the governor's or governors' interest are fully disclosed or known to the board of governors or a committee, and the board of governors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board of governors or committee, but the interested governor or governors are not counted in determining the presence of a quorum and must not vote;

or  
(4) the contract or transaction is a distribution described in section 322B.54, subdivision 1, or a merger or exchange described in section 322B.70, subdivision 1 or 2.

**Subd. 2. Material financial interest.** For purposes of this section:

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

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

**History:** 1992 c 517 art 2 s 83; 1996 c 361 s 39

## MANAGERS

### 322B.67 MANAGERS REQUIRED.

A limited liability company must have one or more natural persons exercising the functions of the offices, however designated, of chief manager and treasurer.

**History:** 1992 c 517 art 2 s 84

### 322B.673 DUTIES OF REQUIRED MANAGERS.

Subdivision 1. **Presumption and modification.** Unless the articles of organization or the operating agreement provide otherwise, the chief manager and treasurer have the duties specified in this section.

Subd. 2. **Chief manager.** The chief manager shall:

- (1) have general active management of the business of the limited liability company;
- (2) when present, preside at all meetings of the board of governors and of the members;
- (3) see that all orders and resolutions of the board of governors are carried into effect;
- (4) sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the limited liability company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or operating agreement or the board of governors to some other manager or agent of the limited liability company;
- (5) maintain records of and, whenever necessary, certify all proceedings of the board of governors and the members; and
- (6) perform other duties prescribed by the board of governors.

Subd. 3. **Treasurer.** The treasurer shall:

- (1) keep accurate financial records for the limited liability company;
- (2) deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of governors;
- (3) endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of governors, making proper vouchers for them;
- (4) disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of governors;
- (5) give to the chief manager and the board of governors, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
- (6) perform other duties prescribed by the board of governors or by the chief manager.

**History:** 1992 c 517 art 2 s 85



**322B.676 OTHER MANAGERS.**

The board of governors may elect or appoint, in a manner set forth in the articles of organization or operating agreement or in a resolution approved by the affirmative vote of a majority of the governors present, any other managers or agents the board of governors considers necessary for the operation and management of the limited liability company. Each of these managers and agents has the powers, rights, duties, responsibilities, and terms in office provided for in the articles or operating agreement or determined by the board of governors.

**History:** 1992 c 517 art 2 s 86

**322B.679 MULTIPLE MANAGERIAL POSITIONS.**

Any number of managerial positions or functions of those positions may be held or exercised by the same person. If a document must be signed by persons holding different positions or functions and a person holds or exercises more than one of those positions or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

**History:** 1992 c 517 art 2 s 87

**322B.68 MANAGERS CONSIDERED ELECTED.**

In the absence of an election or appointment of managers by the board of governors, the person or persons exercising the principal functions of the chief manager or the treasurer are considered to have been elected to those offices, except for the purpose of determining the location of the principal executive office, which in that case is the registered office of the limited liability company.

**History:** 1992 c 517 art 2 s 88

**322B.683 CONTRACT RIGHTS.**

The election or appointment of a person as a manager or agent does not, of itself, create contract rights. A limited liability company may enter into a contract with a manager or agent for a period of time if, in the board of governors' judgment, the contract would be in the best interests of the limited liability company. The fact that the contract may be for a term longer than the terms of the governors who authorized or approved the contract does not make the contract void or voidable.

**History:** 1992 c 517 art 2 s 89

**322B.686 RESIGNATION, REMOVAL AND VACANCY.**

Subdivision 1. **Resignation.** A manager may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective date is specified in the notice.

Subd. 2. **Removal.** A manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present, subject to the provisions of a member control agreement. The removal is without prejudice to any contractual rights of the manager.

Subd. 3. **Vacancy.** A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief manager or treasurer must, be filled for the unexpired portion of the term in the manner provided in the articles or operating agreement, or determined by the board of governors, or pursuant to section 322B.68.

**History:** 1992 c 517 art 2 s 90

**322B.689 DELEGATION.**

Unless prohibited by the articles or operating agreement or by a resolution approved by the affirmative vote of a majority of the governors present, a manager elected or appointed by the board of governors may, without the approval of the board, delegate some or all of the

duties and powers of an office to other persons. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

**History:** 1992 c 517 art 2 s 91

### 322B.69 STANDARD OF CONDUCT.

A manager shall discharge the duties of an office in good faith, in a manner the manager reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 322B.689 is considered a manager for purposes of this section and sections 322B.38 and 322B.699.

**History:** 1992 c 517 art 2 s 92

## LOANS AND OBLIGATIONS

### 322B.693 LOANS, GUARANTEES AND SURETYSHIP.

Subdivision 1. **Prerequisites.** A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:

- (1) is in the usual and regular course of business of the limited liability company;
- (2) is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a business relationship, or an organization to which the limited liability company has the power to make donations, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;
- (3) is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or
- (4) whether or not any separate consideration has been or promised to the limited liability company, has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons, or the unanimous affirmative vote of all members, whether or not ordinarily entitled to vote.

Subd. 2. **Interest and security.** A loan, guaranty, surety contract, or other financial assistance under subdivision 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in a member's financial rights in the limited liability company.

Subd. 3. **Banking authority not granted.** This section does not grant any authority to act as a bank or to carry on the business of banking.

**History:** 1992 c 517 art 2 s 93; 1993 c 137 s 41; 1996 c 361 s 40

### 322B.696 ADVANCES.

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

**History:** 1992 c 517 art 2 s 94; 1993 c 137 s 42

### 322B.699 INDEMNIFICATION.

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

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

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

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

(e) "Special legal counsel" means counsel who has not represented the limited liability company or a related organization, or a governor, manager, member of a committee of the board of governors, or employee, whose indemnification is in issue.

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

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

(2) acted in good faith;

(3) received no improper personal benefit and section 322B.666, if applicable, has been satisfied;

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

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

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

**Subd. 3. Advances.** Subject to the provisions of subdivision 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to

the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:

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

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

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

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

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

**Subd. 6. Determination of eligibility.** (a) All determinations whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 must be made:

(1) by the board of governors by a majority of a quorum. If the governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

(2) if a quorum under clause (1) cannot be obtained, by a majority of a committee of the board of governors, consisting solely of two or more governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of governors including governors who are parties;

(3) if a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to clause (1) or (2) or, if the requisite quorum of the full board of governors cannot be obtained and the committee cannot be established, by a majority of the full board of governors including governors who are parties;

(4) if a determination is not made under clauses (1) to (3), by the members, but the membership interests held by parties to the proceeding must not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or

(5) if an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the limited liability company or (ii) a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of ex-

penses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement or expenses.

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

**Subd. 7. Insurance.** A limited liability company may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the limited liability company would have been required to indemnify the person against the liability under the provisions of this section.

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

**Subd. 9. Indemnification of other persons.** Nothing in this section must be construed to limit the power of the limited liability company to indemnify other persons by contract or otherwise.

**History:** 1992 c 517 art 2 s 95; 1993 c 137 s 43; 1996 c 361 s 41

## MERGER, EXCHANGE, TRANSFER

### 322B.70 MERGER, EXCHANGE, TRANSFER.

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

**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 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.

(c) 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.

**Subd. 3. Transfer.** A limited liability company may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 322B.77.

**Subd. 4. Permitted transactions.** A limited liability company may participate in a merger or exchange only as permitted by this section.

**History:** 1992 c 517 art 2 s 96

### 322B.71 PLAN OF MERGER OR EXCHANGE.

Subdivision 1. **Contents of plan.** A plan of merger or exchange must contain:

(1) the name of the limited liability company and each other constituent organization proposing to merge or participate in an exchange, and:

(i) in the case of a merger, the name of the surviving organization, which may be the limited liability company or the other constituent organization; or

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

(2) the terms and conditions of the proposed merger or exchange;

(3)(i) in the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization, or, in whole or in part, into money or other property; or

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

(4) in the case of a merger, a statement of any amendments to the articles of organization or articles of incorporation, as the case may be, of the surviving organization proposed as part of the merger; and

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

**Subd. 2. Other agreements.** The procedure authorized by this section does not limit the power of a limited liability company to acquire all or part of the ownership interests of one or more classes or series of any other organization through a negotiated agreement with the owners or otherwise.

**History:** 1992 c 517 art 2 s 97

### 322B.72 PLAN APPROVAL.

**Subdivision 1. Governing board approval and notice to owners.** A resolution containing the plan of merger or exchange must be approved by the affirmative vote of a majority of the board members present at a meeting of the governing board of each constituent organization and must then be submitted at a regular or a special meeting to the owners of:

(1) each constituent organization, in the case of a plan of merger; and

(2) the organization whose ownership interests will be acquired by the acquiring organization in the exchange, in the case of a plan of exchange.

If owners owning any class or series of stock of an organization are entitled to vote on the plan of merger or exchange pursuant to this section, written notice must be given to every owner of that organization, 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 in the case of a domestic corporation and in the manner provided in section 322B.34 for notice of meetings of members in the case of a limited liability company. The written notice must 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 must be included in or enclosed with the notice.

**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.

**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.

**History:** 1992 c 517 art 2 s 98; 1996 c 361 s 42,43

### 322B.73 ARTICLES OF MERGER OR EXCHANGE AND CERTIFICATE.

**Subdivision 1. Contents of articles of merger or exchange.** Upon receiving the approval required by section 322B.72, articles of merger or exchange must be prepared that contain the plan of merger or exchange, and a statement that the plan has been approved by each constituent organization pursuant to this chapter.

**Subd. 2. Articles signed and filed.** The articles of merger or exchange must be signed on behalf of each constituent organization and filed with the secretary of state.

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

**History:** 1992 c 517 art 2 s 99

### 322B.74 ABANDONMENT.

**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 has approved the abandonment by the affirmative vote of a majority of the board members present;
- (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.

**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 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.

**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 organizations, in the case of abandonment under subdivision 1, clause (1), the constituent organizations or any one of

them, in the case of abandonment under subdivision 1, clause (2), or the abandoning organization in the case of abandonment under subdivision 2, shall file with the secretary of state articles of abandonment that contain:

- (1) the names of the constituent organizations;
- (2) the provision of this section under which the plan is abandoned; and
- (3) if the plan is abandoned under subdivision 2, the text of the resolution approved by the affirmative vote of a majority of the board members present abandoning the plan.

**History:** 1992 c 517 art 2 s 100

### **322B.75 EFFECTIVE DATE OF MERGER OR EXCHANGE AND EFFECT.**

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

**Subd. 2. Effect on constituent organizations.** When a merger becomes effective:

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

(2) the separate existence of all constituent organizations except the surviving organization ceases;

(3) as to any limited liability company that was a constituent organization and is not the surviving organization, the articles of merger serve as the articles of termination, and, unless previously filed, the notice of dissolution;

(4)(i) if the surviving organization is a limited liability company, the surviving limited liability company has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a limited liability company organized under this chapter; and

(ii) if the surviving organization is a domestic corporation, the surviving domestic corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a domestic corporation organized under chapter 302A;

(5) the surviving organization, whether a limited liability company or a domestic or foreign corporation, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving 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 organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be. The title to any real estate or any interest in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;

(6) the surviving organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations. A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization. Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and

(7) the articles of organization or articles of incorporation, as the case may be, of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

**Subd. 3. Effect on owners.** When a merger or exchange becomes effective, the ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are considered to be exchanged in the case of an exchange. The owners of those ownership interests are entitled only to the securities, money, or other property into which those ownership interests have been converted or for which those ownership interests have been exchanged in accordance with the plan, subject to any dissenters' rights under section 302A.471 or 322B.383, as the case may be.

**History:** 1992 c 517 art 2 s 101; 1996 c 361 s 44



**322B.76 MERGER OR EXCHANGE WITH FOREIGN CORPORATION.**

Subdivision 1. **When permitted.** A limited liability company may merge with or participate in an exchange with a foreign corporation or a foreign 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 foreign limited liability company is incorporated or organized; and

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

Subd. 2. **Laws applicable before transaction.** Each limited liability company shall comply with the provisions of sections 322B.70 to 322B.76 with respect to the merger or exchange of ownership interests of organizations and each foreign corporation or foreign 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. **Surviving domestic limited liability company.** If the surviving organization in a merger will be a domestic limited liability company, it shall comply with all the provisions of this chapter.

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

(1) an agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;

(2) 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

(3) an agreement that it will promptly pay to the dissenting owners of an ownership interests of each constituent domestic limited liability company and constituent domestic corporation the amount, if any, to which they are entitled under section 302A.473 or 322B.386, as the case may be.

**History:** 1992 c 517 art 2 s 102

**322B.77 TRANSFER OF ASSETS AND WHEN PERMITTED.**

Subdivision 1. **Member approval and when not required.** A limited liability company may, by affirmative vote of a majority of the governors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, and without member approval:

(1) sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

(2) grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

(3) transfer any or all of its property to a corporation all the shares of which are owned by the limited liability company.

Subd. 2. **Member approval and when required.** A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, when approved at a regular

or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

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

**Subd. 4. Transferee liability.** The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

**History:** 1992 c 517 art 2 s 103; 1993 c 137 s 44,45; 1996 c 361 s 45

## DISSOLUTION

### 322B.80 DISSOLUTION.

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

but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if (A) either there are at least two remaining members or a new member is admitted as provided in section 322B.11, and (B) the existence and business of the limited liability company is continued either by the consent of all the remaining members under a right to 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;

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

**Subd. 2. Procedures following dissolution.** A limited liability company dissolved by one of the dissolution events specified in subdivision 1 must be wound up and terminated under the following dissolution provisions:

(1) when a limited liability company is dissolved under subdivision 1, clause (1), by reason of the expiration of its limited period of duration, the limited liability company must be wound up and terminated under sections 322B.81 to 322B.82, 322B.826, 322B.83, and 322B.873;

(2) When a limited liability company is dissolved under subdivision 1, clause (2), by reason of a court order, the limited liability company must be wound up and terminated under sections 322B.83 to 322B.856;

(3) when a limited liability company is dissolved under subdivision 1, clause (3), by its organizers, the limited liability company must be wound up and terminated under sections 322B.803 and 322B.81 to 322B.83;

(4) when a limited liability company is dissolved under subdivision 1, clause (4), by its members, the limited liability company must be wound up and terminated under sections 322B.806 to 322B.83 and 322B.873; and

(5) when a limited liability company is dissolved under subdivision 1, clause (5), by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 322B.81 to 322B.82, 322B.826, 322B.83, and 322B.873.

**Subd. 3. Security interests.** Notwithstanding any provision of law, articles of organization, member control agreement, operating agreement, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights, or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights, or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with chapter 336.

**History:** 1992 c 517 art 2 s 104; 1993 c 137 s 46,47; 1995 c 128 art 3 s 8

### **322B.803 NONJUDICIAL DISSOLUTION AND TERMINATION BY ORGANIZERS.**

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

**Subd. 2. Articles of dissolution and termination.** (a) A majority of the organizers or governors shall sign articles of dissolution and termination containing:

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

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

**Subd. 3. Effective date.** When the articles of dissolution and termination have been filed with the secretary of state, the limited liability company is terminated.

**Subd. 4. Certificate of termination.** The secretary of state shall issue to the terminated limited liability company or its legal representative a certificate of termination that contains:

- (1) the name of the limited liability company;
- (2) the date and time the articles of dissolution and termination were filed with the secretary of state; and
- (3) a statement that the limited liability company is terminated.

**History:** 1992 c 517 art 2 s 105; 1996 c 361 s 46,47

### **322B.806 NONJUDICIAL DISSOLUTION BY MEMBERS.**

**Subdivision 1. Manner.** A limited liability company may be dissolved by the members when authorized in the manner set forth in this section.

**Subd. 2. Notice and approval.** (a) Written notice shall be given to each member, whether or not entitled to vote at a meeting of members, within the time and in the manner provided

in section 322B.34 for notice of meetings of members and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the limited liability company and that dissolution must be followed by the winding up and termination of the limited liability company.

(b) The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the limited liability company is dissolved.

**History:** 1992 c 517 art 2 s 106

### **322B.81 FILING NOTICE OF DISSOLUTION AND EFFECT.**

Subdivision 1. **Contents.** If dissolution of the limited liability company is approved pursuant to section 322B.806, subdivision 2, or it occurs under section 322B.80, subdivision 1, clause (1) or (5), the limited liability company shall file with the secretary of state a notice of dissolution. The notice must contain:

(1) the name of the limited liability company;

(2)(i) if the dissolution is approved pursuant to section 322B.806, subdivision 2, the date and place of the meeting at which the resolution was approved; and a statement that the requisite vote of the members was received, or that members validly took action without a meeting;

(ii) if the dissolution occurs under section 322B.80, subdivision 1, clause (1), by the expiration of the limited liability company's duration, a statement of the expiration date; and

(iii) if the dissolution occurs under section 322B.80, subdivision 1, clause (5), by the termination of a membership interest of a member, a statement that the continued membership of a member has terminated and the date of that termination.

Subd. 2. **Winding up.** When the notice of dissolution has been filed with the secretary of state, and subject to section 322B.823, the limited liability company shall cease to carry on its business, except to the extent necessary for the winding up of the business of the limited liability company. The members shall retain the right to revoke the dissolution in accordance with section 322B.823 and the right to remove governors or fill vacancies on the board of governors. The limited liability company existence continues to the extent necessary to wind up the affairs of the limited liability company until the dissolution is revoked or articles of termination are filed with the secretary of state.

Subd. 3. **Certain mergers permitted during winding up.** As part of winding up, the limited liability company may participate in a merger with another limited liability company or with a domestic or foreign corporation under sections 322B.70 to 322B.76, but the dissolved limited liability company shall not be the surviving organization.

Subd. 4. **Remedies continued.** The filing with the secretary of state of a notice of dissolution does not affect any remedy in favor of the limited liability company or any remedy against it or its governors, managers, or members in those capacities, except as provided in section 322B.816, 322B.82, or 322B.863.

**History:** 1992 c 517 art 2 s 107

### **322B.813 PROCEDURE IN WINDING UP.**

Subdivision 1. **Procedures to be followed where winding up accomplished by merger.** If the business of the limited liability company is wound up and terminated by merging the dissolved limited liability company into a successor organization:

(1) the procedures stated in sections 322B.70 to 322B.76 must be followed;

(2) sections 322B.816 to 322B.823 and 322B.863 to 322B.866 do not apply; and

(3) once the merger is effective, a creditor or claimant of the terminated limited liability company, and all those claiming through or under the creditor or claimant, are barred from suing the terminated limited liability company on that claim or otherwise realizing upon or enforcing it against the terminated limited liability company, but the creditor, claimant, and those claiming under the creditor and claimant, may, if not otherwise barred by law, assert their claims against the surviving organization of the merger.

**Subd. 2. Procedures to be followed otherwise.** If the business of the limited liability company is to be wound up and terminated other than by merging the dissolved limited liability company into a successor organization, the procedures stated in subdivisions 3 to 5 must be followed.

**Subd. 3. Collection and payment.** When a notice of dissolution has been filed with the secretary of state, the board of governors, or the managers acting under the direction of the board of governors, shall proceed as soon as possible:

(1) to give notice to creditors and claimants under section 322B.816 or to proceed under section 322B.82;

(2) subject to any business continuation agreement, to collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and

(3) except as provided in sections 322B.816, 322B.82, and 322B.863, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 322B.873.

**Subd. 4. Transfer of assets.** Notwithstanding section 322B.77, when a notice of dissolution has been filed with the secretary of state, the governors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolved limited liability company without a vote of the members.

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

**History:** 1992 c 517 art 2 s 108; 1996 c 361 s 48

### **322B.816 WINDING UP PROCEDURE FOR LIMITED LIABILITY COMPANIES THAT GIVE NOTICE TO CREDITORS AND CLAIMANTS.**

**Subdivision 1. When permitted and how given.** When a notice of dissolution has been filed with the secretary of state, and the business of the limited liability company is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under section 322B.81, subdivision 3, then the limited liability company may give notice of the filing to each creditor of and claimant against the limited liability company known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in a legal newspaper in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to section 322B.03, subdivision 32.

**Subd. 2. Required contents.** The notice to creditors and claimants must contain:

(1) a statement that the limited liability company has dissolved and is in the process of winding up its affairs;

(2) a statement that the limited liability company has filed with the secretary of state a notice of dissolution;

(3) the date of filing the notice of dissolution;

(4) the address of the office to which written claims against the limited liability company must be presented; and

(5) the date by which all the claims must be received, which must be the later of 90 days after published notice or, with respect to a particular known creditor or claimant, 90 days after the date on which written notice was given to that creditor or claimant. Published notice is considered given on the date of first publication for the purpose of determining this date.

**Subd. 3. Optional contents where business being continued.** If the business of the limited liability company is being continued under a business continuation agreement, the notice to creditors may also contain all, but not less than all, of the following:

(1) a statement that the business of the dissolved limited liability company is being continued by a successor organization;

(2) the name and address of the successor organization;

(3) an undertaking by the successor organization to assume all the liabilities of the dissolved limited liability company; and

(4) a statement that creditors of the dissolved limited liability company do not need to file claims against the limited liability company in order to preserve their rights to enforce those claims against the successor organization.

Neither the existence of a business continuation agreement nor the giving of the information described in this subdivision affects a creditor's or claimant's right to proceed against the dissolved limited liability company.

**Subd. 4. Claims against limited liability companies that give notice.** (a) A limited liability company that gives notice to creditors and claimants has 30 days from the receipt of each claim filed according to the procedures set forth by the limited liability company on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is considered accepted.

(b) A creditor or claimant to whom notice is given and whose claim is rejected by the limited liability company has 60 days from the date of rejection, 180 days from the date the limited liability company filed with the secretary of state the notice of dissolution, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.

(c) A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the limited liability company on or before the date set forth in the notice is barred from suing the dissolved limited liability company on that claim or otherwise realizing upon or enforcing it against the dissolved limited liability company, except as provided in section 322B.863. If the dissolved limited liability company gave the additional information referred to in subdivision 3, nothing in this section bars the creditor or claimant from seeking to enforce its rights against the successor organization.

(d) A creditor or claimant whose claim is rejected by the limited liability company under paragraph (b) is barred from suing on that claim or otherwise realizing upon or enforcing it whether against the dissolved limited liability company or any successor organization, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in paragraph (b).

**Subd. 5. Articles of termination and when filed.** Articles of termination for a limited liability company that has given notice to creditors and claimants under this section must be filed with the secretary of state after:

(1) the 90-day period in subdivision 2, clause (5), has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

(2) the longest of the periods described in subdivision 4, paragraph (b), has expired and there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision 4, paragraph (b).

**Subd. 6. Contents of articles of termination.** The articles of termination must state:

(1) the last date on which the notice was given and that the payment of all creditors and claimants filing a claim within the 90-day period in subdivision 2, clause (5), has been made or provided for, or the date on which the longest of the periods described in subdivision 4, paragraph (b), expired;

(2) that the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 322B.873, or that adequate provision has been made for that distribution; and

(3) that there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision 4, paragraph (b), or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

**History:** 1992 c 517 art 2 s 109

**322B.82 WINDING UP PROCEDURE FOR LIMITED LIABILITY COMPANIES THAT DO NOT GIVE NOTICE TO CREDITORS AND CLAIMANTS.**

Subdivision 1. **Articles of termination and when filed.** Articles of termination for a limited liability company whose business is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under section 322B.81, subdivision 3, and that has not given notice to creditors and claimants in the manner provided in section 322B.816 must be filed with the secretary of state after:

(1) the payment of claims of all known creditors and claimants has been made or provided for; or

(2) at least two years have elapsed from the date of filing the notice of dissolution.

Subd. 2. **Contents.** The articles of termination must state:

(1) if articles of termination are being filed pursuant to subdivision 1, clause (1), that all known debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made for payment or discharge;

(2) that the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 322B.873, or that adequate provision has been made for that distribution; and

(3) that there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

Subd. 3. **Claims against limited liability companies that do not give notice and are not wound up and terminated through merger.** (a) If the limited liability company has paid or provided for all known creditors or claimants at the time articles of termination are filed, a creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it.

(b) If the limited liability company has not paid or provided for all known creditors and claimants at the time articles of termination are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 322B.863.

**History:** 1992 c 517 art 2 s 110

**322B.823 REVOCATION OF DISSOLUTION.**

Subdivision 1. **Generally.** Except as provided in subdivisions 4 and 5, winding up proceedings commenced pursuant to section 322B.806 may be revoked before the filing of articles of termination.

Subd. 2. **Notice to members and approval.** Written notice must be given to every member entitled to vote at a members' meeting within the time and in the manner provided in section 322B.34 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution. The proposed revocation must be submitted to the members at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the dissolution is revoked.

Subd. 3. **Effective date and effect.** Revocation of dissolution is effective when a notice of revocation is filed with the secretary of state. After the notice is filed the limited liability company may cease to wind up and resume business.

Subd. 4. **Restrictions on revocation.** If a dissolved limited liability company is being wound up and terminated by being merged into a successor organization under section 322B.81, subdivision 3, and the plan of merger has been approved under section 322B.72, then the dissolution may be revoked under this section only after the plan of merger has been properly abandoned under section 322B.74.

Subd. 5. **Revocation prohibited.** When dissolution occurs under section 322B.80, subdivision 1, clause (1), (2), or (5), revocation is prohibited.

**History:** 1992 c 517 art 2 s 111

**322B.826 EFFECTIVE DATE OF TERMINATION AND CERTIFICATE OF TERMINATION.**

Subdivision 1. **Effective date.** When the articles of termination have been filed with the secretary of state, the limited liability company is terminated.

Subd. 2. **Certificate.** The secretary of state shall issue to the dissolved limited liability company or its legal representative a certificate of termination that contains:

- (1) the name of the limited liability company;
- (2) the date the articles of termination were filed with the secretary of state; and
- (3) a statement that the limited liability company is terminated.

**History:** 1992 c 517 art 2 s 112

**322B.83 SUPERVISED WINDING UP AND TERMINATION FOLLOWING A NONJUDICIAL DISSOLUTION.**

After an event of dissolution has occurred and before a certificate of termination has been issued, the limited liability company or, for good cause shown, a member or creditor may apply to a court within the county in which the registered office of the limited liability company is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 322B.833 to 322B.863.

**History:** 1992 c 517 art 2 s 113

**322B.833 JUDICIAL INTERVENTION AND EQUITABLE REMEDIES, DISSOLUTION, AND TERMINATION.**

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

- (1) in a supervised winding up and termination pursuant to section 322B.83;
- (2) in an action by a member when it is established that:
  - (i) the governors or the persons having the authority otherwise vested in the board of governors are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;
  - (ii) the governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members or governors of any limited liability company, or as managers or employees of a closely held limited liability company;
  - (iii) the members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;
  - (iv) the limited liability company assets are being misapplied or wasted; or
  - (v) an event of dissolution has occurred under section 322B.80, subdivision 1, clause (1), (4) or (5) but the limited liability company is not acting to wind up its affairs;
- (3) in an action by a creditor when:
  - (i) the claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or
  - (ii) the limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or
- (4) in an action by the attorney general to dissolve the limited liability company in accordance with section 322B.843 when it is established that a decree of termination is appropriate.

Subd. 2. **Buy-out on motion.** In an action under subdivision 1, clause (2), in which one or more of the circumstances described in that clause is established, the court may, upon motion of a limited liability company or a member, order the sale by a plaintiff or a defendant of



all membership interests of the limited liability company held by the plaintiff or defendant to either the limited liability company or the moving members, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

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

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

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

The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of a membership interest under this subdivision and provided that the limited liability company or the moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member shall no longer have any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded.

**Subd. 3. Condition of limited liability company.** In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but shall not refuse to order any particular form of relief solely on the ground that the limited liability company has accumulated or current operating profits.

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

**Subd. 5. Considerations as to dissolution.** In determining what relief to order, the court shall take into account that any relief that results in the termination of a member's membership interest will cause dissolution of the limited liability company. If the court orders relief that results in dissolution of the limited liability company, the court shall make appropriate orders providing for the winding up and termination of the dissolved limited liability company.

**Subd. 6. Liquidation remedy.** In deciding whether to order winding up through liquidation, the court shall consider whether lesser relief suggested by one or more parties, or provided in a business continuation agreement, such as any form of equitable relief, or a buy-out or partial liquidation coupled with the continuation of the business of the dissolved limited liability company through a successor organization, would be adequate to permanently relieve the circumstances established under subdivision 1, clause (2) or (3). Lesser relief may

be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

**Subd. 7. Expenses.** If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

**Subd. 8. Venue and parties.** Proceedings under this section must be brought in a court within the county in which the registered office of the limited liability company is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

**History:** 1992 c 517 art 2 s 114; 1996 c 361 s 49-51

### 322B.836 JUDICIAL INTERVENTION PROCEDURES.

**Subdivision 1. Action before hearing.** In proceedings under section 322B.833, the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the limited liability company assets wherever situated, and carry on the business of the limited liability company until a full hearing can be held.

**Subd. 2. Action after hearing.** After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the limited liability company assets, including all amounts owing to the limited liability company by persons who have made contribution agreements and by persons who have made contributions by means of enforceable promises of future performance. A receiver has authority, subject to the order of the court, to continue the business of the limited liability company and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the limited liability company either at public or private sale.

**Subd. 3. Discharge of obligations upon liquidation.** If the court determines that the limited liability company is to be dissolved with winding up to be accomplished by liquidation, then the assets of the limited liability company or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge or:

(1) the costs and expenses of the proceedings, including attorneys' fees and disbursements;

(2) debts, taxes, and assessments due the United States, the state of Minnesota and their subdivisions, and other states and their subdivisions, in that order;

(3) claims duly proved and allowed to employees under the provisions of chapter 176; provided, that claims under this clause shall not be allowed if the limited liability company carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

(4) claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

(5) other claims duly proved and allowed.

**Subd. 4. Remainder to members.** After payment of the expenses of receivership and claims of creditors duly proved under subdivision 3, the remaining assets, if any, must be distributed to the members in accordance with section 322B.873, subdivision 1.

**History:** 1992 c 517 art 2 s 115

### 322B.84 QUALIFICATIONS OF RECEIVERS AND POWERS.

**Subdivision 1. Qualifications.** A receiver shall be a natural person or a domestic or foreign organization authorized to transact business in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

**Subd. 2. Powers.** A receiver may sue and defend in all courts as receiver of the limited liability company. The court appointing the receiver has exclusive jurisdiction of the limited liability company and its property.

**History:** 1992 c 517 art 2 s 116

**322B.843 ACTION BY ATTORNEY GENERAL.**

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

- (1) the articles of organization were procured through fraud;
- (2) the limited liability company was organized for a purpose not permitted by section 322B.10;
- (3) the limited liability company failed to comply with the requirements of sections 322B.10 to 322B.18 essential to organization under this chapter;
- (4) the limited liability company has flagrantly violated a provision of this chapter, or has violated a provision of this chapter more than once, or has violated more than one provision of this chapter; or
- (5) the limited liability company has acted, or failed to act, in a manner that constitutes surrender or abandonment of the limited liability company privileges or enterprise.

Subd. 2. **Notice to limited liability company and correction.** An action must not be commenced under this section until 30 days after notice to the limited liability company by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the limited liability company has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles of organization or the operating agreement or by performance of or abstention from the act, the attorney general shall give the limited liability company 30 additional days in which to effect the correction before filing the action.

**History:** 1992 c 517 art 2 s 117

**322B.846 FILING CLAIMS IN JUDICIAL INTERVENTION PROCEEDINGS.**

Subdivision 1. **Judicial intervention proceedings.** In proceedings referred to in section 322B.833, the court may require all creditors and claimants of the limited liability company to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.

Subd. 2. **Filing of claims.** If the court requires the filing of claims, it shall fix a date not less than 120 days from the date of the order as the last day for the filing of claims, and shall prescribe the notice of the fixed date that shall be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the limited liability company.

**History:** 1992 c 517 art 2 s 118

**322B.85 DISCONTINUANCE OF PROCEEDINGS FOR WINDING UP THROUGH LIQUIDATION.**

If the court has determined that the limited liability company is to be dissolved, with winding up to be accomplished by liquidation, and subsequently the court determines that the grounds for dissolution no longer exist or that the grounds for ordering winding up through liquidation no longer exist, the court shall make whatever orders are just and reasonable under the circumstances.

**History:** 1992 c 517 art 2 s 119

**322B.853 DECREE OF TERMINATION.**

Subdivision 1. **When entered.** If the court has ordered a dissolution, or the court has intervened under section 322B.833, subdivision 1, clause (1), or has ordered or caused a dissolution under any other provision of that subdivision, then after the affairs of the dissolved limited liability company have been appropriately wound up the court shall enter a decree terminating the dissolved limited liability company.

Subd. 2. **Effective date.** When the decree terminating the limited liability company has been entered, the limited liability company is terminated.

**History:** 1992 c 517 art 2 s 120

**322B.856 FILING DECREE.**

After the court enters a decree terminating a limited liability company, the court administrator shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state shall not charge a fee for filing the decree.

**History:** 1992 c 517 art 2 s 121

**322B.86 DEPOSIT WITH STATE TREASURER OF AMOUNT DUE CERTAIN MEMBERS.**

Upon termination of a limited liability company, the portion of the assets distributable to a member who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, must be reduced to money and deposited with the state treasurer. The amount deposited is appropriated to the state treasurer and must be paid over to the member or a legal representative, upon proof satisfactory to the state treasurer of a right to payment.

**History:** 1992 c 517 art 2 s 122

**322B.863 CLAIMS BARRED AND EXCEPTIONS.**

Subdivision 1. **Claims barred.** Except as provided in this section, a creditor or claimant whose claims are barred under section 322B.816, 322B.82, or 322B.846 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of termination proceedings, and all those claiming through or under the creditor or claimant.

Subd. 2. **Claims reopened.** At any time within one year after articles of termination have been filed with the secretary of state pursuant to section 322B.816 or 322B.82, subdivision 1, clause (2), or a decree of termination has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

(1) against the limited liability company to the extent of undisposed assets; or

(2) if the undisposed assets are not sufficient to satisfy the claim, against a member, whose liability is limited to a portion of the claim that is equal to the portion of the distributions to members in liquidation or termination received by the member, but in no event may a member's liability exceed the amount that the member actually received in the termination.

Subd. 3. **Obligations incurred during termination proceedings.** All known contractual debts, obligations, and liabilities incurred in the course of winding up and terminating the limited liability company's affairs must be paid or provided for by the limited liability company before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the managers and governors of the limited liability company who are responsible for, but who fail to cause, the limited liability company to pay or make provision for payment of the debts, obligations, and liabilities or against members to the extent permitted under section 322B.56. This subdivision does not apply to dissolution and termination under the supervision or order of a court.

**History:** 1992 c 517 art 2 s 123

**322B.866 RIGHT TO SUE OR DEFEND AFTER TERMINATION.**

After a limited liability company has been terminated, any of its former managers, governors, or members may assert or defend, in the name of the limited liability company, any claim by or against the limited liability company.

**History:** 1992 c 517 art 2 s 124

**322B.87 OMITTED ASSETS.**

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to members may be transferred by a court in this state.

**History:** 1992 c 517 art 2 s 125

**322B.873 DISPOSITION OF ASSETS UPON DISSOLUTION.**

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

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

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

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

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

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

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

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

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

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

(1) those rights must be honored; but

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

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

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

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

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

(C) the amount of other damages, if any, provided for in subdivision 4.

**Subd. 4. Damages and offsets for wrongful dissociation and breach of a member control agreement.** A member who wrongfully resigns or retires is liable to the limited liability company for any damages caused by the member's wrongful resignation or retirement. Any member who breaches a member control agreement is liable to the limited liability company for any damages caused by the breach. Any payment due a member under this section, including payments to dissenters due to winding up merger under section 322B.81, subdivision 3, is subject to offset these damages.

**History:** 1992 c 517 art 2 s 126; 1993 c 137 s 48

**ACTIONS AGAINST COMPANIES****322B.876 SERVICE OF PROCESS ON LIMITED LIABILITY COMPANY.**

Subdivision 1. **Who may be served.** A process, notice, or demand required or permitted by law to be served upon a limited liability company may be served either upon the registered agent, if any, of the limited liability company named in the articles of organization, or upon a manager of the limited liability company, or upon the secretary of state as provided in section 5.25.

Subd. 2. [Repealed, 1995 c 128 art 1 s 20]

Subd. 3. [Repealed, 1995 c 128 art 1 s 20]

Subd. 4. [Repealed, 1995 c 128 art 1 s 20]

**History:** 1992 c 517 art 2 s 127; 1995 c 128 art 1 s 13

**322B.88 WHEN A MEMBER IS NOT A PROPER PARTY.**

A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company except when:

(1) the object of the proceeding is to determine or enforce a member's right against, or liability to, the limited liability company; or

(2) the proceeding involves a claim of personal liability or responsibility of that member and that claim has some basis other than the member's status as a member.

**History:** 1992 c 517 art 2 s 128

**322B.883 STATE INTERESTED IN PROCEEDINGS.**

If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested in the proceeding or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

**History:** 1992 c 517 art 2 s 129

**FOREIGN COMPANIES****322B.90 GOVERNING LAW.**

Subdivision 1. **State of organization.** Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members. A foreign limited liability company may not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

Subd. 2. **Limitations.** A foreign limited liability company holding a valid certificate of authority in this state has no greater rights and privileges than a domestic limited liability company. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

**History:** 1992 c 517 art 2 s 130

**322B.901** [Repealed, 1995 c 128 art 3 s 27]

**322B.905 NAME.**

A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic limited liability company, whether or not the name is the name under which it is authorized in its jurisdiction of organization.

**History:** 1992 c 517 art 2 s 131

**322B.91 APPLICATION FOR CERTIFICATE OF AUTHORITY.**

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

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

Subd. 2. **Fees.** The application must be accompanied by payment of \$185, which includes a \$150 initial license fee in addition to the \$35 filing fee required by section 322B.03, subdivision 18.

**History:** 1992 c 517 art 2 s 132; 1993 c 137 s 50

**322B.915 ISSUANCE OF CERTIFICATE OF AUTHORITY.**

Subdivision 1. **Issuance of certificate.** If the secretary of state finds that an application for a certificate of authority conforms to law and all fees have been paid, the secretary shall:

- (1) endorse on the application the word "Filed" and the date of the filing of it;
- (2) file the original of the application; and
- (3) return the original of the application to the person who filed it with a certificate of authority issued by the secretary of state.

Subd. 2. **Effective date of certificate.** A certificate of authority issued under this section is effective from the date the application is filed with the secretary of state accompanied by the payment of the requisite fees.

**History:** 1992 c 517 art 2 s 133

**322B.92 AMENDMENTS TO THE CERTIFICATE OF AUTHORITY.**

If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the secretary of state:

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

**History:** 1992 c 517 art 2 s 134; 1993 c 137 s 51

**322B.925 REGISTERED AGENT AND CERTAIN REPORTS.**

A foreign limited liability company authorized to transact business in this state shall:

- (1) appoint and continuously maintain a registered agent in the same manner as provided in section 322B.13; or
- (2) file a report upon any change in the name or business address of its registered agent in the same manner as provided in section 322B.135, subdivision 3.

**History:** 1992 c 517 art 2 s 135

**322B.93 CERTIFICATE OF WITHDRAWAL.**

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

- (1) the name of the limited liability company and the state or country under the laws of which it is organized;
- (2) that the limited liability company is not transacting business in this state;
- (3) that the limited liability company surrenders its authority to transact business in this state;
- (4) that the limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the limited liability company was authorized to transact business in this state may be made on the limited liability company by service upon the secretary of state; and
- (5) a post office address to which a person may mail a copy of any process against the limited liability company.

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

**History:** 1992 c 517 art 2 s 136; 1993 c 137 s 52

**322B.935 REVOCATION OF CERTIFICATE OF AUTHORITY.**

Subdivision 1. **Revocation procedure.** The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of any of these events:

- (1) the foreign limited liability company has failed to appoint and maintain a registered agent as required by this chapter, file a report upon any change in the name or business address of the registered agent, or file in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 322B.92; or
- (2) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the foreign limited liability company pursuant to this chapter.

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

- (1) the secretary has given the foreign limited liability company not less than 60 days' notice by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the office address in the jurisdiction of organization; and
- (2) during the 60-day period, the foreign limited liability company has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

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

**History:** 1992 c 517 art 2 s 137; 1993 c 137 s 53,54

**322B.94 TRANSACTION OF BUSINESS WITHOUT CERTIFICATE OF AUTHORITY.**

Subdivision 1. **Access to courts.** A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.



Subd. 2. **Contracts and defense suits.** The failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

Subd. 3. **Designated registered agent.** A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.

Subd. 4. **Fees.** A foreign limited liability company that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that limited liability company had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

Subd. 5. **Civil penalty.** A foreign limited liability company that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, not to exceed \$5,000. Each governor or, in the absence of governors, each member or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed \$1,000.

Subd. 6. **Injunction.** The civil penalties set forth in subdivision 5 may be recovered in an action brought within the district court for Ramsey county by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, governors, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this chapter.

Subd. 7. **Member limited liability.** A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

**History:** 1992 c 517 art 2 s 138

### **322B.945 TRANSACTIONS NOT CONSTITUTING TRANSACTING BUSINESS.**

Subdivision 1. **Excluded acts.** The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter:

- (1) maintaining, defending, or settling any proceeding;
- (2) holding meetings of its members or carrying on any other activities concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (8) securing or collecting debts or enforcing mortgages, and security interests in property securing the debts;
- (9) holding, protecting, renting, maintaining and operating real or personal property in this state so acquired;

(10) selling or transferring title to property in this state to any person; or

(11) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like manner.

Subd. 2. **Effect of personal jurisdiction.** The term "transacting business" as used in this section has no effect on personal jurisdiction under section 543.19.

Subd. 3. **Ownership of income-producing property.** For purposes of this section, any foreign limited liability company that owns income-producing real or tangible personal property in this state, other than property exempted under subdivision 1, will be considered transacting business in this state.

Subd. 4. **Scope of excluded transactions definitions.** The list of activities in subdivision 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

*History: 1992 c 517 art 2 s 139*

### **322B.95 ACTION BY ATTORNEY GENERAL.**

The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

*History: 1992 c 517 art 2 s 140*

### **322B.955 SERVICE OF PROCESS.**

Service of process on a foreign limited liability company must be as provided in section 5.25.

*History: 1992 c 517 art 2 s 141; 1995 c 128 art 1 s 14*

### **322B.960 BIENNIAL REGISTRATION.**

Subdivision 1. **Information required.** Starting January 1, 1995, a limited liability company, whether domestic or foreign, shall once every other year file with the secretary of state a registration containing:

(a) the name of the limited liability company;

(b) the alternate name, if any, a foreign limited liability company has adopted for use in this state;

(c) the address of its registered office;

(d) the name of its registered agent, if any;

(e) the jurisdiction of organization; and

(f) the name and business address of the manager or other person exercising the principal functions of the chief manager of the limited liability company.

Subd. 2. **Due date for filing.** A registration is due two years from: (1) the date the limited liability company is formed or registered with the secretary of state; or (2) the date of the last registration. The biennial registration will be due on or before the anniversary date of formation or registration in Minnesota. The secretary of state shall mail a registration form to each limited liability company no less than 90 days before the registration is due. The registration form must be sent to the last registered office address filed with the secretary of state.

Subd. 3. **Amendments on registration form.** A domestic limited liability company which needs to amend its name, registered office address, or registered agent may make these amendments on the biennial registration form. If an amendment is made on the biennial registration form, it must be signed by an authorized person. The fee listed in section 322B.175 applies to these amendments.

Subd. 4. **Loss of good standing.** A limited liability company that fails to file a registration pursuant to the requirements of subdivision 1 loses its good standing in this state. The limited liability company may regain its good standing in this state by filing a single annual registration and paying a \$50 fee.

Subd. 5. **Administrative termination.** (a) If a domestic limited liability company has not filed a registration during a reporting period, the secretary of state shall notify the limited

liability company that it will be administratively terminated if the biennial registration is not filed by the due date of the next registration. This notice must be sent to the limited liability company at its registered office address of record as part of the registration form. If the limited liability company does not file the biennial registration by the due date, the secretary of state shall administratively terminate the existence of the limited liability company. The secretary of state shall issue a certificate of administrative termination which shall be sent to the limited liability company at its registered office address. A copy of the certificate must be filed with the secretary of state.

(b) If a non-Minnesota limited liability company has not filed a registration during a reporting period, the secretary of state shall notify the limited liability company that its authority to do business in Minnesota will be revoked if the biennial registration is not filed by the due date of the next registration. This notice must be sent to the limited liability company at its registered office address of record as part of the registration form. If the limited liability company does not file the biennial registration by the due date, the secretary of state shall revoke the authority of the limited liability company to do business in Minnesota. The secretary of state shall issue a certificate of revocation which shall be sent to the limited liability company at its registered office address. A copy of the certificate must be filed with the secretary of state.

**Subd. 6. Reinstatement.** If a limited liability company is administratively terminated or has its authority to do business in Minnesota revoked, it may retroactively reinstate its existence or authority to do business by filing a single biennial registration and paying a \$50 fee but only within one year of the date of the termination or revocation.

(a) For a domestic limited liability company, filing the biennial registration with the secretary of state:

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

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

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

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

**History:** 1993 c 131 s 1; 1995 c 128 art 3 s 9,10