

File Number: H.F. 2764
Version: Second engrossment

Date: March 1, 2018

Authors: Smith

Subject: Corporations, nonprofit corporations, limited liability companies, limited partnerships, and partnerships

Analyst: Larie Ann Pampuch

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd/.

Overview

This bill makes clarifying and technical changes relating to the domestication and conversion of corporations, nonprofit corporations, limited liability companies, limited partnerships, and partnerships.

Section

- 1 **Written action.** Revises the definition of “written action” for business corporations to include electric communications.
- 2 **Record.** Revises the definition of “record” to include all tangible medium, including electronic mediums.
- 3 **Definitions.** Makes technical changes.
- 4 **[302A.191] Forum selection provisions.**

Subd. 1. Authorization. Allows articles or bylaws to require that internal corporate claims must be brought only in a court of this state. Prohibits articles or bylaws from requiring that internal corporate claims be brought in another state/jurisdiction.

Subd. 2. Definition. Defines “internal corporate claim” as a claim based on a violation of duty by a director, officer, or shareholder; a derivative action; or a claim brought under the business corporation chapter or the corporation’s articles or bylaws.

- 5 **Compensation agreements.** Provides that when a plan of merger has been approved by the board of a publicly traded corporation the corporation is not prohibited from

Section

entering into or changing agreements relating to the compensation for directors or officers.

- 6 **Board may authorize.** Allows the board to authorize the issuance of shares/options in multiple transactions, with terms, and the timing of issuance set by the board. The board can also make the issuance contingent on the action of another, if the issuance meets certain requirements.
- 7 **Termination.** Clarifies that the appointment of a proxy may be terminated if a shareholder attends and votes at the meeting that the proxy related to.
- 8 **Rights not to apply.** Makes technical changes.
- 9 **Notice of action.** Provides that a corporation that has received a qualified offer may provide notice to all shareholders. The notice must include certain information and be sent at least ten days before the consummation of the offer.
- 10 **Notice of dissent.** Requires a shareholder who receives a notice under section 10, and wishes to exercise dissenter's rights, to maintain all of their shares and file a written notice to demand the fair value of the shares with the corporation. The shareholder must provide notice to the corporation before the consummation of the offer.
- 11 **Notice of procedure; deposit of shares.** Makes technical and conforming changes to align with sections 10 and 11.
- 12 **Board approval; notice to shareholders.** Makes technical change.
- 13 **Approval by shareholders not required for merger following qualified offer.** Allows a publicly held corporation to engage in a merger without shareholder approval if certain requirements are met. There are requirements relating to the contents of the plan of merger, an offer for all outstanding shares, the purchase of outstanding shares, and the converting of shares. Provides definitions.
- 14 **When authorized; content of plan.** Makes technical changes.
- 15 **Approval of parent's shareholder; when required.** Makes technical change.
- 16 **Requirements.** Makes technical change.
- 17 **Conversion includes transfer to a new home state.** Clarifies that a conversion may result in a business organization changing where it is domiciled.
- 18 **Merger of Wholly Owned Subsidiaries.**
 - Subd. 1. Definitions.** Makes technical and clarifying changes to definitions relating to a nonprofit corporation's merger with a wholly owned limited liability subsidiary. Clarifies that a wholly owned subsidiary does not include a nonprofit limited liability company.
 - Subd. 2. Plan of merger.** Makes technical and clarifying changes.
 - Subd. 3. Approval by parent.** Makes technical change.
 - Subd. 4. Articles of merger; contents of articles.** Makes technical changes.
 - Subd. 6. Certificate.** Makes technical and clarifying changes.

Section

19 Conversion.

Subd. 1. Conversion requirements. Allows certain entities, including business corporations and limited liability companies, to convert to a limited partnership. Allows a limited partnership to convert into certain entities, including a business corporation and a limited liability company. Prohibits certain entities from converting to and from a limited partnership. Requires certain statutory and legal requirements be met in order to convert.

Subd. 2. Contents of plan of conversion. Requires a plan of conversion to include certain information, including the manner and basis for converting interests in the converting organization into money, interests in the converted organization, or other.

20 Action on plan of conversion by converting limited partnership.

Subd. 1. Consent required. Makes technical change.

Subd. 2. Amendment of plan or abandonment of conversion. Makes technical and clarifying changes.

21 Filings required for conversion; effective date.

Subd. 1. Articles of conversion. Makes clarifying and technical changes regarding the conversion of a limited partnership to another entity, and the conversion of another entity into a limited partnership.

Subd. 2. Effective date and time of conversion. Provides that the conversion is effective upon filing the articles of conversion with the secretary of state, or another date if specified in the articles.

Subd. 3. Certificate. Requires the secretary of state to issue a certificate of conversion to the converted organization, or its legal representative.

22 Effect of conversion.

Subd. 1. Same entity. Makes technical changes, corrects cross-references.

Subd. 2. Effect on converting organization. Makes technical and clarifying changes.

Subd. 3. Foreign organization. Makes technical and clarifying changes, corrects cross-references.

23 [321.1115] Domestication.

Subd. 1. Foreign limited partnership. Provides the requirements for a foreign limited partnership to become a partnership in this state.

Subd. 2. Domestic limited partnership. Provides the requirements for a limited partnership in this state to become a foreign limited partnership.

Subd. 3. Plan of domestication. Requires a plan of domestication to include certain information, including the manner and basis for converting interests in the domesticating organization into money, interests in the domesticated organization, or other.

Section

24 [321.1116] Action on plan of domestication by domesticating limited partnership.

Subd. 1. Consent required. Requires all partners in a limited partnership to agree to a plan of domestication, and for foreign limited partnership to meet the requirements of their governing statutes.

Subd. 2. Amendment of plan or abandonment of domestication. Allows a limited partnership to amend or abandon a plan of domestication under certain circumstances.

25 [321.1117] Filing required for domestication; effective date.

Subd. 1. Articles of domestication. Requires a plan of domestication containing certain information to be filed with the secretary of state.

Subd. 2. Effective date of domestication. Provides that a domestication is effective when the certificate of limited partnership takes effect, or according to the governing statutes of the applicable jurisdiction if it is a foreign limited partnership.

26 [321.1118] Effect of domestication.

Subd. 1. Effect on domesticating company. Provides that when a domestication occurs the domesticated limited partnership is for all purposes the same limited partnership that existed prior to the domestication, including in relation to its property, debts, and legal actions, with exceptions.

Subd. 2. Foreign company. Provides that a domesticated foreign limited partnership must consent to the jurisdiction of this state and appoint the secretary of state as its agent for service of process.

Subd. 3. Foreign jurisdiction. If a limited partnership is domesticated in a foreign jurisdiction, the limited partnership must file certain information with the secretary of state.

27 [321.1119] Restrictions on approval of mergers, exchanges, conversions, and domestications.

Subd. 1. Personal liability of partner. Requires that a partner who will have personal liability consent to the merger, conversion, or domestication, unless the partner otherwise consented in the partnership agreement, or certain documents allow fewer than all the partners to consent to the conversion or domestication.

Subd. 2. Consent. Clarifies that a partner does not consent by agreeing to a partnership agreement that allows amendments by fewer than all the partners.

28 Reinstatement. Makes technical changes relating to limited liability companies administratively terminated under chapter 322B prior, to January 1, 2018.

29 [322C.0810] Amendment of foreign registration statement. Requires a foreign limited liability company to file an amendment to its foreign registration statement with the secretary of state if there is a change to the company's name, jurisdiction of formation, address, or other required information.

Section

30 Parent organization. Defines “parent organization” as an organization that owns all of the rights to distribution and management of a limited liability company.

31 Wholly owned subsidiary. Defines “wholly owned subsidiary” as a limited liability company in which all the rights to distribution and management are owned by a parent organization.

32 [322C.1016] Merger of wholly owned subsidiaries.

Subd. 1. When authorized. Allows a parent organization that is a domestic or foreign limited liability company to merge with a wholly owned subsidiary, or to merge wholly owned subsidiaries into other wholly owned subsidiaries. Requires the parent organization to approve the merger with a resolution and have a plan of merger that meets certain requirements.

Subd. 2. Plan of merger. Requires the plan of merger to contain certain information including the manner of converting ownership and securities.

Subd. 3. Articles of merger; content of articles. Requires articles of merger to contain certain information.

Subd. 4. Articles signed, filed. Requires the articles of merger to be signed on behalf of the parent organization and filed with the secretary of state.

Subd. 5. Certificate. Requires the secretary of state to issue a certificate of merger to the appropriate party.

Subd. 6. Nonexclusivity. Permits the type of merger allowed by this section to also be accomplished pursuant to other statutes dealing with merger in this chapter.

33 Conversion of partnership to limited partnership.

Subd. 1. Conversion requirements. Allows certain entities, including business corporations and limited liability companies, to convert to a limited partnership. Allows a partnership to convert into certain entities, including a business corporation and a limited liability company and limited partnership. Prohibits certain entities from converting to and from a limited partnership. Requires certain statutory and legal requirements be met in order to convert.

Subd. 2. Contents of plan of conversion. Requires a plan of conversion to include certain information, including the manner and basis for converting interests in the converting organization into money, interests in the converted organization, or other.

Subd. 3. Member consent required. Requires all partners in a partnership or a number or percentage specified for conversion in a partnership agreement to consent to the conversion.

Subd. 4. Amendment of plan or abandonment of conversion. Allows a partnership to amend or abandon a plan of conversion under certain circumstances.

34 Filings required for conversion; effective date and time.

Subd. 1. Articles of conversion. Requires articles of conversion to contain certain information.

Section

Subd. 2. Effective date and time of conversion. Provides that a conversion becomes effective when the articles are filed, or at a later time if specified in the articles or required by a governing jurisdiction's statutes.

Subd. 3. Certificate. Requires the secretary of state to issue a certificate of conversion to the appropriate party.

35 **Effect of conversion.**

Subd. 1. Same entity. Provides that when a conversion occurs the converted entity is for all purposes the same as that which existed prior to conversion.

Subd. 2. Effect of converting organization. Provides that the converted entity is the same as that which existed prior to conversion, including in relation to its property, debts, and legal actions, with exceptions.

Subd. 3. Foreign organization. Provides that a converted foreign organization must consent to the jurisdiction of this state and appoint the secretary of state as its agent for service of process.

36 **[323A.0910] Domestication.**

Subd. 1. Foreign partnership. Provides the requirements for a foreign partnership to become a partnership in this state.

Subd. 2. Domestic partnership. Provides the requirements for a partnership in this state to become a foreign partnership.

Subd. 3. Plan of domestication. Requires a plan of domestication to include certain information, including the manner and basis for converting interests in the domesticating partnership into money, interests in the partnership, or other.

37 **[323A.0911] Action on plan of domestication by domesticating partnership.**

Subd. 1. Consent required. Requires all partners in a partnership to agree to a plan of domestication, and for foreign partnership to meet the requirements of their governing statutes.

Subd. 2. Amendment of plan or abandonment of domestication. Allows a partnership to amend or abandon a plan of domestication under certain circumstances.

38 **[323A.0912] Filings required for domestication; effective date.**

Subd. 1. Articles of domestication. Requires a plan of domestication containing certain information to be filed with the secretary of state.

Subd. 2. Effective date of domestication. Provides that a domestication is effective upon filing of the articles of domestication, or a later date if specified in the articles, or if required by the governing jurisdiction's statutes.

39 **[323A.0913] Effect of domestication.**

Subd. 1. Effect on domesticating company. Provides that when a domestication occurs the domesticated partnership is for all purposes the partnership that existed

Section

prior to the domestication, including in relation to its property, debts, and legal actions, with exceptions.

Subd. 2. Foreign company. Provides that a domesticated foreign limited liability partnership must consent to the jurisdiction of this state and appoint the secretary of state as its agent for service of process.

40 [323A.0914] Restrictions on approval of mergers, exchanges, conversions, and domestications.

Subd. 1. Personal liability of partner. Requires a partner that will have personal liability consent to the merger, conversion or domestication, unless the partner otherwise consented in the partnership agreement, or the partnership agreement allows fewer than all the partners to consent to the conversion or domestication.

Subd. 2. Consent. Clarifies that a partner does not consent by agreeing to a partnership agreement that allows amendments by fewer than all the partners.

41 Repealer. Makes a technical change by repealing section 323A.0908.

42 Effective date. Sections 20 to 28 and 34 to 41 are effective January 1, 2018.