

A bill for an act

relating to the Office of the Secretary of State; regulating registrations, filings, and dissolutions of certain entities; providing fees; regulating foreign limited partnership name changes; regulating notaries public; amending Minnesota Statutes 2006, sections 5.12, subdivision 1; 302A.821, subdivision 4; 308A.995, subdivision 4; 308B.121, subdivision 4; 308B.215, subdivision 2; 317A.823, subdivision 1; 321.0206; 336.1-110; 336.9-516; 336.9-525; 358.41; 358.42; 358.50; 359.085, subdivisions 2, 3; proposing coding for new law in Minnesota Statutes, chapters 308B; 321; repealing Minnesota Statutes 2006, sections 69.051, subdivision 1c; 359.085, subdivision 8.

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

ARTICLE 1 ENTITIES

Section 1. Minnesota Statutes 2006, section 5.12, subdivision 1, is amended to read:

Subdivision 1. **Fees.** The secretary of state shall charge a fee of \$5 for each certificate or certification of a copy of any document filed in the Office of the Secretary of State. The secretary of state shall charge a fee of \$3 for a copy of an original filing of a corporation, limited partnership, assumed name, or trade or service mark, ~~or for the complete record of a certificate of assumed name.~~ The secretary of state shall charge a fee of \$3 for a copy of any or all subsequent filings of a corporation, limited partnership, assumed name, or trade or service mark. The secretary of state shall charge a fee of \$1 per page for copies of other nonuniform commercial code documents filed with the secretary of state. At the time of filing, the secretary of state may provide at the public counter, without charge, a copy of a filing, ten or fewer pages in length, to the person making the filing.

Sec. 2. Minnesota Statutes 2006, section 302A.821, subdivision 4, is amended to read:

Subd. 4. **Penalty; reinstatement.** (a) A corporation that has failed to file a registration pursuant to the requirements of subdivision 2 must be dissolved by the secretary of state as described in paragraph (b).

(b) If the corporation has not filed the registration ~~for two consecutive~~ during any calendar year, the secretary of state must issue a certificate of administrative dissolution and the certificate must be filed in the Office of the Secretary of State. ~~The secretary of state shall send notice to the corporation that the corporation has been dissolved and that the corporation may be reinstated by filing a registration and a \$25 fee. The notice must be given by United States mail unless the company has indicated to the secretary of state that they are willing to receive notice by electronic notification, in which case the secretary of state may give notice by mail or the indicated means. The secretary of state shall annually inform the attorney general and the commissioner of revenue of the methods by which the names of corporations dissolved under this section during the preceding year may be determined.~~ The secretary of state must ~~also~~ make available in an electronic format the names of the dissolved corporations. A corporation dissolved in this manner is not entitled to the benefits of section 302A.781. The liability, if any, of the shareholders of a corporation dissolved in this manner shall be determined and limited in accordance with section 302A.557, except that the shareholders shall have no liability to any director of the corporation under section 302A.559, subdivision 2.

(c) After administrative dissolution, filing a registration and the \$25 fee with the secretary of state:

(1) returns the corporation to good standing as of the date of the dissolution;

(2) validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and

(3) restores to the corporation all assets and rights of the corporation to the extent they were held by the corporation before the dissolution occurred, except to the extent that assets or rights were affected by acts occurring after the dissolution or sold or otherwise distributed after that time.

Sec. 3. Minnesota Statutes 2006, section 308A.995, subdivision 4, is amended to read:

Subd. 4. **Penalty; dissolution.** (a) A cooperative that has failed to file a registration pursuant to the requirements of this section by December 31 of the calendar year for which the registration was required must be dissolved by the secretary of state as described in paragraph (b).

(b) If the cooperative has not filed the registration by December 31 of that calendar year, the secretary of state must issue a certificate of involuntary dissolution, and the

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certificate must be filed in the Office of the Secretary of State. ~~The secretary of state must annually inform the attorney general and the commissioner of revenue of the methods by which the names of cooperatives dissolved under this section during the preceding year may be determined.~~ The secretary of state must also make available in an electronic format the names of the dissolved cooperatives. A cooperative dissolved in this manner is not entitled to the benefits of section 308A.981.

Sec. 4. Minnesota Statutes 2006, section 308B.121, subdivision 4, is amended to read:

Subd. 4. **Penalty; dissolution.** (a) A cooperative that has failed to file a registration under the requirements of this section must be dissolved by the secretary of state as described in paragraph (b).

(b) If the cooperative has not filed the registration by December 31 of that calendar year, the secretary of state must issue a certificate of involuntary dissolution and the certificate must be filed in the Office of the Secretary of State. ~~The secretary of state must annually inform the attorney general and the commissioner of revenue of the methods by which the names of cooperatives dissolved under this section during the preceding year may be determined.~~ ~~The secretary of state must also make available in an electronic format the names of the dissolved cooperatives.~~ A cooperative dissolved in this manner is not entitled to the benefits of section 308B.971.

Sec. 5. Minnesota Statutes 2006, section 308B.215, subdivision 2, is amended to read:

Subd. 2. **Filing.** The original articles and a designation of the cooperative's registered office and agent, ~~including a registration form under section 308B.121,~~ shall be filed with the secretary of state. The fee for filing the articles with the secretary of state is \$60.

Sec. 6. **[308B.903] NOTICE OF INTENT TO DISSOLVE.**

Before a cooperative begins dissolution, a notice of intent to dissolve must be filed with the secretary of state. The notice must contain:

(1) the name of the cooperative;

(2) the date and place of the members' meeting at which the resolution was approved; and

(3) a statement that the requisite vote of the members approved the proposed dissolution.

Sec. 7. Minnesota Statutes 2006, section 317A.823, subdivision 1, is amended to read:

Subdivision 1. **Annual registration.** (a) The secretary of state must send annually to each corporation at the registered office of the corporation a postcard notice announcing the need to file the annual registration and informing the corporation that the annual registration may be filed online and that paper filings may also be made, and informing the corporation that failing to file the annual registration will result in an administrative dissolution of the corporation.

(b) ~~Except for corporations to which paragraph (d) applies,~~ Each calendar year beginning in the calendar year following the calendar year in which a corporation incorporates, a corporation must file with the secretary of state by December 31 of each calendar year a registration containing the information listed in paragraph (c).

(c) The registration must include:

(1) the name of the corporation;

(2) the address of its registered office;

(3) the name of its registered agent, if any; and

(4) the name and business address of the officer or other person exercising the principal functions of president of the corporation.

~~(d) The timely filing of an annual financial report and audit or an annual financial statement under section 69.051, subdivision 1 or 1a, by a volunteer firefighter relief association, as reflected in the notification by the state auditor under section 69.051, subdivision 1c, constitutes presentation of the corporate registration. The secretary of state may reject the registration by the volunteer firefighter relief association. Rejection must occur if the information provided to the state auditor does not match the information in the records of the secretary of state. The volunteer firefighter relief association may amend the articles of incorporation as provided in sections 317A.131 to 317A.151 so that the information from the state auditor may be accepted for filing. The timely filing of an annual financial report and audit or an annual financial statement under section 69.051, subdivision 1 or 1a, does not relieve the volunteer firefighter relief association of the requirement to file amendments to the articles of incorporation directly with the secretary of state.~~

Sec. 8. Minnesota Statutes 2006, section 321.0206, is amended to read:

321.0206 DELIVERY TO AND FILING OF RECORDS BY SECRETARY OF STATE; EFFECTIVE TIME AND DATE.

(a) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. Unless the

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secretary of state determines that a record does not comply with the filing requirements of this chapter, and if the appropriate filing fees have been paid, the secretary of state shall file the record and:

(1) for a statement of dissociation, send:

(A) a copy of the filed statement to the person which the statement indicates has dissociated as a general partner; and

(B) a copy of the filed statement to the limited partnership;

(2) for a statement of withdrawal, send:

(A) a copy of the filed statement to the person on whose behalf the record was filed; and

(B) if the statement refers to an existing limited partnership, a copy of the filed statement to the limited partnership; and

(3) for all other records, send a copy of the filed record to the person on whose behalf the record was filed.

(b) Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

(c) Except as otherwise provided in sections 321.0116 and 321.0207, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

(1) if the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) the specified date; or

(B) the 30th day after the record is filed; or

(4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(A) the specified date; or

(B) the 30th day after the record is filed.

(d) The appropriate fees for filings under this chapter are:

(1) for filing a certificate of limited partnership, \$100;

(2) for filing an amended certificate of limited partnership, \$50;

(3) for filing any other record, other than the annual report required by section 321.0210, for which no fee must be charged, required or permitted to be delivered for filing, \$35;

(4) for filing a certificate requesting authority to transact business in Minnesota as a foreign limited partnership, \$85;

(5) for filing an application of reinstatement, \$25; ~~and~~

(6) for filing a name reservation for a foreign limited partnership name, \$35; and

(7) for filing any other record, other than the annual report required by section 321.0210, for which no fee must be charged, required or permitted to be delivered for filing on a foreign limited partnership authorized to transact business in Minnesota, \$50.

Sec. 9. [321.0909] NAME CHANGES FILED IN HOME STATE.

A foreign limited partnership shall notify the secretary of state of any changes to the partnership name filed with the state of formation by filing a certificate from the state of formation certifying to the change of name.

Sec. 10. Minnesota Statutes 2006, section 336.1-110, is amended to read:

336.1-110 UNIFORM COMMERCIAL CODE ACCOUNT.

The Uniform Commercial Code account is established as an account in the state treasury. Fees that are not expressly set by statute but are charged by the secretary of state to offset the costs of providing a service under this chapter must be deposited in the state treasury and credited to the Uniform Commercial Code account.

Fees that are not expressly set by statute but are charged by the secretary of state to offset the costs of providing information contained in the computerized records maintained by the secretary of state must be deposited in the state treasury and credited to the Uniform Commercial Code account.

Money in the Uniform Commercial Code account is continuously appropriated to the secretary of state to implement and maintain the central filing system under this chapter, to provide, improve, and expand other online or remote lien and business entity filing, retrieval, and payment method services provided by the secretary of state, and to provide electronic access to other computerized records maintained by the secretary of state.

Sec. 11. Minnesota Statutes 2006, section 336.9-516, is amended to read:

336.9-516 WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING.

(a) **What constitutes filing.** Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office. For purposes of filing office authorization, transmission of records using the Extensible Markup Language (XML) format is authorized by the filing office after the later of July 1, 2007, or the determination of the secretary of state that the central filing system is capable of receiving and processing these records;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by section 336.9-512 or 336.9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under section 336.9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) in the case of a record filed or recorded in the filing office described in section 336.9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the debtor is an individual or an organization; or

(C) if the financing statement indicates that the debtor is an organization, provide:

(i) a type of organization for the debtor;

(ii) a jurisdiction of organization for the debtor; or
(iii) an organizational identification number for the debtor or indicate that the debtor has none;

(6) in the case of an assignment reflected in an initial financing statement under section 336.9-514(a) or an amendment filed under section 336.9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by section 336.9-515(d).

(c) Rules applicable to subsection (b). For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 336.9-512, 336.9-514, or 336.9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

Sec. 12. Minnesota Statutes 2006, section 336.9-525, is amended to read:

336.9-525 FEES.

(a) Initial financing statement or other record: general rule. Except as otherwise provided in subsection (d), the fee for filing and indexing a record under this part ~~delivered on paper~~ is \$20 ~~and for a record delivered by any electronic means is \$15.~~ \$5 of the fee collected for each filing made online must be deposited in the uniform commercial code account.

(b) Number of names. The number of names required to be indexed does not affect the amount of the fee in subsection (a).

(c) Response to information request. The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, ~~delivered on paper~~ is \$20 ~~and for a record delivered by any electronic means is \$15.~~ \$5 of the fee collected for each filing made online must be deposited in the uniform commercial code account.

(d) Record of mortgage. This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a

9.1 financing statement covering as-extracted collateral or timber to be cut under section
9.2 336.9-502(c). However, the recording and satisfaction fees that otherwise would be
9.3 applicable to the record of the mortgage apply.

9.4 Sec. 13. **REPEALER.**

9.5 Minnesota Statutes 2006, section 69.051, subdivision 1c, is repealed.

9.6 Sec. 14. **EFFECTIVE DATES.**

9.7 Sections 8 and 12 are effective July 1, 2007. Sections 2 to 4 are effective January 1,
9.8 2008. The remaining sections in this article are effective August 1, 2007.

9.9 **ARTICLE 2**
9.10 **NOTARIES**

9.11 Section 1. Minnesota Statutes 2006, section 358.41, is amended to read:

9.12 **358.41 DEFINITIONS.**

9.13 As used in sections 358.41 to 358.49:

9.14 (1) "Notarial act" means any act that a notary public of this state is authorized to
9.15 perform, and includes taking an acknowledgment, administering an oath or affirmation,
9.16 taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying
9.17 or attesting a copy, and noting a protest of a negotiable instrument. A notary public may
9.18 perform a notarial act by electronic means.

9.19 (2) "Acknowledgment" means a declaration by a person that the person has executed
9.20 an instrument or electronic record for the purposes stated therein and, if the instrument
9.21 or electronic record is executed in a representative capacity, that the person signed
9.22 the instrument with proper authority and executed it as the act of the person or entity
9.23 represented and identified therein.

9.24 (3) "Verification upon oath or affirmation" means a declaration that a statement is
9.25 true made by a person upon oath or affirmation.

9.26 (4) "In a representative capacity" means:

9.27 (i) for and on behalf of a corporation, partnership, limited liability company, trust, or
9.28 other entity, as an authorized officer, agent, partner, trustee, or other representative;

9.29 (ii) as a public officer, personal representative, guardian, or other representative,
9.30 in the capacity recited in the instrument;

9.31 (iii) as an attorney in fact for a principal; or

9.32 (iv) in any other capacity as an authorized representative of another.

10.1 (5) "Notarial officer" means a notary public or other officer authorized to perform
10.2 notarial acts.

10.3 (6) "Electronic signature" means an electronic sound, symbol, or process attached
10.4 to or logically associated with a record and executed or adopted by a person with the
10.5 intent to sign the record.

10.6 (7) "Electronic record" means a record created, generated, sent, communicated,
10.7 received, or stored by electronic means.

10.8 Sec. 2. Minnesota Statutes 2006, section 358.42, is amended to read:

10.9 **358.42 NOTARIAL ACTS.**

10.10 (a) In taking an acknowledgment, the notarial officer must determine, either from
10.11 personal knowledge or from satisfactory evidence, that the person appearing before the
10.12 officer and making the acknowledgment is the person whose true signature is on the
10.13 instrument or electronic record.

10.14 (b) In taking a verification upon oath or affirmation, the notarial officer must
10.15 determine, either from personal knowledge or from satisfactory evidence, that the person
10.16 appearing before the officer and making the verification is the person whose true signature
10.17 is made in the presence of the officer on the statement verified.

10.18 (c) In witnessing or attesting a signature the notarial officer must determine, either
10.19 from personal knowledge or from satisfactory evidence, that the signature is that of the
10.20 person appearing before the officer and named therein. When witnessing or attesting a
10.21 signature, the officer must be present when the signature is made.

10.22 (d) In certifying or attesting a copy of a document, electronic record, or other item,
10.23 the notarial officer must determine that the proffered copy is a full, true, and accurate
10.24 transcription or reproduction of that which was copied.

10.25 (e) In making or noting a protest of a negotiable instrument or electronic record the
10.26 notarial officer must determine the matters set forth in section 336.3-505.

10.27 (f) A notarial officer has satisfactory evidence that a person is the person whose true
10.28 signature is on a document or electronic record if that person (i) is personally known to
10.29 the notarial officer, (ii) is identified upon the oath or affirmation of a credible witness
10.30 personally known to the notarial officer, or (iii) is identified on the basis of identification
10.31 documents.

10.32 Sec. 3. Minnesota Statutes 2006, section 358.50, is amended to read:

10.33 **358.50 EFFECT OF ACKNOWLEDGMENT.**

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11.1 An acknowledgment made in a representative capacity for and on behalf of a
11.2 corporation, partnership, limited liability company, trust, or other entity and certified
11.3 substantially in the form prescribed in this chapter is prima facie evidence that the
11.4 instrument or electronic record was executed and delivered with proper authority.

11.5 Sec. 4. Minnesota Statutes 2006, section 359.085, subdivision 2, is amended to read:

11.6 Subd. 2. **Verifications.** In taking a verification upon oath or affirmation, the notarial
11.7 officer must determine, either from personal knowledge or from satisfactory evidence, that
11.8 the person appearing before the officer and making the verification is the person whose
11.9 true signature is made in the presence of the officer on the statement verified.

11.10 Sec. 5. Minnesota Statutes 2006, section 359.085, subdivision 3, is amended to read:

11.11 Subd. 3. **Witnessing or attesting signatures.** In witnessing or attesting a signature,
11.12 the notarial officer must determine, either from personal knowledge or from satisfactory
11.13 evidence, that the signature is that of the person appearing before the officer and named in
11.14 the document or electronic record. When witnessing or attesting a signature, the officer
11.15 must be present when the signature is made.

11.16 Sec. 6. **REPEALER.**

11.17 Minnesota Statutes 2006, section 359.085, subdivision 8, is repealed.

11.18 Sec. 7. **EFFECTIVE DATE.**

11.19 Sections 1 to 6 are effective August 1, 2007.