

A bill for an act

relating to business organizations; providing for the return of documents submitted to the secretary of state; regulating foreign cooperatives; removing the request that the attorney general and the Department of Revenue be notified of the dissolution of foreign cooperatives and nonprofit corporations; allowing foreign limited liability partnerships to use alternative names under certain circumstances; eliminating contest of name filings; amending Minnesota Statutes 2006, sections 47.12, subdivision 2; 60A.07, subdivision 1; 303.11; 303.17, subdivision 4; 308A.005, by adding a subdivision; 308B.211, subdivision 2; 308B.221, subdivision 4; 317A.823, subdivision 2; 321.0108; 323A.1102; proposing coding for new law in Minnesota Statutes, chapters 5; 308A; 308B; repealing Minnesota Statutes 2006, sections 5.22; 302A.115, subdivision 8; 303.05, subdivision 4; 308A.121, subdivision 3; 308B.151; 317A.115, subdivision 6; 322B.12, subdivision 6.

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

Section 1. **[5.19] RETURN OF DOCUMENTS.**

Whenever the secretary of state is required to return a document filed with or submitted to the Office of the Secretary of State, that obligation is satisfied if:

(1) the secretary of state provides an image of the document to the person to whom the document is to be returned by electronic mail or facsimile transmission; or

(2) the person to whom the document is to be returned is given electronic access, including printing access, to an image of the document.

Sec. 2. Minnesota Statutes 2006, section 47.12, subdivision 2, is amended to read:

Subd. 2. **Organization.** ~~(a)~~ Three or more persons may form a corporation for any of the purposes specified in this section by applying to the Department of Commerce and complying with all applicable organizational requirements and the conditions set out in clauses (1) to (7). The incorporators must subscribe a certificate specifying:

(1) the corporation's name, which must distinguish it from all other corporations authorized to do business in this state, and must contain the word "company," "corporation," "bank," "trust," "association," or "incorporated";

(2) the general nature of the corporation's business and its principal place of business;

(3) the period of its duration, if limited;

(4) the names and places of residence of the incorporators;

(5) the board in which the management of the corporation will be vested, the date of the annual meeting at which it will be elected, and the names and addresses of the board members until the first election, a majority of whom must always be residents of this state or reside within 50 miles of the main office of the corporation;

(6) the amount of capital stock, if any, how the capital stock is to be paid in, the number of shares into which it is to be divided, and the par value of each share; and, if there is to be more than one class, a description and the terms of issue of each class, and the method of voting on each class; and

(7) the highest amount of indebtedness or liability to which the corporation will at any time be subject. However, a corporation subject to section 48.27 may show its highest amount of indebtedness to be 30 times the amount of its capital and actual surplus.

The certificate may contain any other lawful provision defining and regulating the powers and business of the corporation, its officers, directors, trustees, members, and stockholders.

~~(b) 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.~~

Sec. 3. Minnesota Statutes 2006, section 60A.07, subdivision 1, is amended to read:

Subdivision 1. **Incorporation.** Three or more persons may form a domestic insurance corporation for any of the purposes specified in subdivision 2 by applying to the Department of Commerce and complying with all applicable organizational requirements and the conditions set out in clauses (1) to (6). The incorporators must subscribe a certificate specifying:

(1) the corporation's name, which must distinguish it from all other corporations authorized to do business in this state, and must contain the word "company," "corporation," or "incorporated";

(2) the general nature of the corporation's business and its principal place of business;

(3) the period of its duration, if limited;

(4) the names and places of residence of the incorporators;

(5) the board in which the management of the corporation will be vested, the date of the initial annual meeting at which it will be elected, and the names and addresses of the board members until the first election; and

(6) whether the corporation is organized on the stock plan, mutual plan, or otherwise; and, if organized as a stock company, the amount of capital stock, how the capital stock is to be paid in, the number of shares into which it is to be divided, and the par value of each share; and, if there is to be more than one class, a description and the terms of issue of each class and the method of voting on each class.

The certificate may contain any other lawful provision defining and regulating the powers and business of the insurance corporation, its officers, directors, trustees, members, or stockholders.

~~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.~~

Domestic insurance corporations established in this manner are organized under and governed by chapter 302A, except as otherwise provided in subdivision 1d and chapter 66A.

Sec. 4. Minnesota Statutes 2006, section 303.11, is amended to read:

**303.11 NOTICE OF NAME CHANGES, WHERE FILED.**

Each foreign corporation authorized to transact business in this state, shall, whenever it changes its name, dissolves, or merges, ~~file in the Office of~~ certify to the secretary of state that it has obtained and possesses a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the corporation is organized.

Sec. 5. Minnesota Statutes 2006, section 303.17, subdivision 4, is amended to read:

Subd. 4. **Certificate of revocation.** (a) Upon revoking the certificate of authority of a corporation because of a default under subdivision 1, clauses (1) to (3) or (5), the secretary of state shall:

(1) issue a certificate of revocation; and

(2) mail to the corporation, at its registered office in this state, a notice of the revocation.

(b) Upon revoking the certificate of authority of a corporation because of a default under subdivision 1, clause (4), the secretary of state shall issue a certificate of revocation, and the certificate must be filed in the Office of the Secretary of State. No further notice to the corporation is required.

(c) ~~The secretary of state shall annually inform the attorney general and the commissioner of revenue of the methods by which the names of corporations revoked under this section during the preceding year may be determined.~~ The secretary of state shall also make the names of the revoked corporations available in an electronic format.

**EFFECTIVE DATE.** This section is effective January 1, 2008.

Sec. 6. Minnesota Statutes 2006, section 308A.005, is amended by adding a subdivision to read:

Subd. 7b. **Foreign cooperative.** "Foreign cooperative" means a foreign business entity organized to conduct business on a cooperative plan consistent with this chapter or chapter 308B.

Sec. 7. **[308A.032] FOREIGN COOPERATIVES; SECTIONS APPLICABLE.**

Subdivision 1. **General.** Except for this section, this chapter does not apply to foreign cooperatives.

Subd. 2. **Sections applicable.** (a) Except as provided in paragraph (b), a foreign cooperative is subject to chapter 303. Unless it complies with chapter 303, a foreign cooperative may not transact business in this state.

(b) Sections 303.05, 303.07, and 303.115 do not apply to foreign cooperatives.

Sec. 8. **[308B.152] FOREIGN COOPERATIVES; SECTIONS APPLICABLE.**

Subdivision 1. **General.** Except for this section, this chapter does not apply to foreign cooperatives.

Subd. 2. **Sections applicable.** (a) Except as provided in paragraph (b), a foreign cooperative is subject to chapter 303. Unless it complies with chapter 303, a foreign cooperative may not transact business in this state.

(b) Sections 303.05, 303.07, and 303.115 do not apply to foreign cooperatives.

Sec. 9. Minnesota Statutes 2006, section 308B.211, subdivision 2, is amended to read:

Subd. 2. **Reservation; contest of name.** The cooperative name shall be reserved for the cooperative during its existence. ~~A person doing business in this state may contest the registration of a name with the secretary of state under section 5.22.~~

Sec. 10. Minnesota Statutes 2006, section 308B.221, subdivision 4, is amended to read:

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Subd. 4. **Filing.** An amendment of the articles shall be filed with the secretary of state ~~with a registration statement under section 308B.121, and~~. The amendment is effective upon filing or the date specified in the resolution adopting the amendment.

Sec. 11. Minnesota Statutes 2006, section 317A.823, subdivision 2, is amended to read:

Subd. 2. **Penalty.** (a) A corporation that has failed to file a registration pursuant to the requirements of subdivision 1 must be dissolved by the secretary of state as described in paragraph (b).

(b) If the corporation has not filed the delinquent registration, 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 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 317A.781.

**EFFECTIVE DATE.** This section is effective January 1, 2008.

Sec. 12. Minnesota Statutes 2006, section 321.0108, is amended to read:

**321.0108 NAME.**

(a) The name of a limited partnership may contain the name of any partner.

(b) The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and may not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

(c) Except as provided in section 321.1206(d)(1), the name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not otherwise contain the abbreviation "L.P." or "LP."

(d) The limited partnership name shall not contain a word or phrase that indicates or implies that it is formed for a purpose other than a legal purpose.

(e) The limited partnership name shall be distinguishable upon the records in the Office of the Secretary of State from the name of each domestic corporation, limited partnership, limited liability partnership, and limited liability company, whether profit or nonprofit, and each foreign corporation, limited partnership, limited liability partnership,

and limited liability company 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 formation, reserved as provided for in sections 302A.117, 322A.03, 322B.125, or 333.001 to 333.54, unless there is filed with the certificate of limited partnership one of the following:

(1) the written consent of the domestic corporation, limited partnership, limited liability partnership, or limited liability company, or the foreign corporation, limited partnership, limited liability partnership, or limited liability company authorized or registered to do business in this state or the holder of a reserved name or a name filed by or registered with the secretary of state under sections 333.001 to 333.54 having a name that is not distinguishable;

(2) a certified copy of a final decree of a court in this state establishing the prior right of the applicant to the use of the name in this state; or

(3) the applicant's affidavit that the corporation, limited partnership, or limited liability company with the name that is not distinguishable has been incorporated or on file in this state for at least three years prior to the affidavit, if it is a domestic corporation, limited partnership, or limited liability company, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign corporation, limited partnership, or limited liability company, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit; that the corporation, limited partnership, or limited liability company or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the corporation, limited partnership, or limited liability company or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the corporation or limited liability company or in care of the agent of the limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, stating that the applicant intends to use a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee corporation, limited partnership, limited liability company, or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the corporation, limited partnership, or limited liability company with the name that is not distinguishable in the county in which is located the registered office of the corporation, limited partnership, or limited liability company shown in the records of the secretary of state or has been unable

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to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the corporation, limited partnership, limited liability company, or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

(f) The secretary of state shall determine whether a name is distinguishable from another name for purposes of this section and section 321.0109.

(g) This section and section 321.0109 do not abrogate or limit the law of unfair competition or unfair practices; nor sections 333.001 to 333.54; nor the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols; nor derogate the common law or the principles of equity.

(h) A limited partnership that is the surviving organization in a merger with one or more other organizations, or that is formed by the reorganization of one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may have the same name as that used in this state by any of the other organizations, if the other organization whose name is sought to be used was organized under the laws of, or is authorized to transact business in, this state.

(i) The use of a name by a limited partnership in violation of this section does not affect or vitiate its existence, but a court in this state may, upon application of the state or of a person interested or affected, enjoin the limited partnership from doing business under a name assumed in violation of this section, although its certificate of limited partnership may have been filed with the secretary of state and a certificate of formation issued.

~~(j) 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.~~

Sec. 13. Minnesota Statutes 2006, section 323A.1102, is amended to read:

**323A.1102 STATEMENT OF FOREIGN QUALIFICATION.**

(a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) the name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP"; If this name is unavailable, the foreign limited liability

partnership may use an alternate name to transact business in the state if it delivers to the secretary of state a certified copy of the resolution of the partners adopting the alternate name;

(2) the street address, including the zip code, of the partnership's chief executive office and, if different, the street address, including the zip code, of an office of the partnership in this state, if any;

(3) if there is no office of the partnership in this state, the name and street address, including the zip code, of the partnership's agent for service of process;

(4) a deferred effective date, if any; and

(5) the name of the jurisdiction under whose law the foreign limited liability partnership was originally registered.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to section 323A.0105(d) or revoked pursuant to section 323A.1003.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(e) A statement of foreign qualification may include the information necessary to make an election under section 319B.04, subdivision 2, and to update that information as provided in section 319B.04, subdivision 3.

**Sec. 14. REPEALER.**

Minnesota Statutes 2006, sections 5.22; 302A.115, subdivision 8; 303.05, subdivision 4; 308A.121, subdivision 3; 308B.151; 317A.115, subdivision 6; and 322B.12, subdivision 6, are repealed.

## **5.22 CONTEST OF REGISTRATION OF NAME.**

Subdivision 1. **Notice of contest; deposit.** A person doing business in this state may contest the subsequent registration of a name with the Office of the Secretary of State by filing an acknowledged notice of contest with the secretary of state and sending a copy of the notice of contest to the person who subsequently registered the contested name. However, the secretary will not accept a contest between persons registered under sections 333.001 to 333.06. The notice to the secretary of state must be accompanied by a \$100 deposit, which the secretary of state shall award to the prevailing party in the contest.

Subd. 2. **Procedure.** (a) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name on the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days.

(b) If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest.

(c) If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing, the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing under chapter 14.

Subd. 3. **Standard of review.** The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

- (1) the strength or unique nature of the names;
- (2) the similarity of sound, appearance, or meaning of the names;
- (3) the intent of the parties;
- (4) the type of businesses engaged in or to be engaged in by the parties;
- (5) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;
- (6) the nature and quality of goods or services provided by the parties;
- (7) the level of sophistication of potential purchasers of goods or services offered by the parties;

(8) whether the party contesting the subsequent registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and

(9) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

Subd. 4. **Decision; enforcement.** The secretary of state shall make a decision for one of the parties within ten days of the hearing and may order that the contested name be changed on the records of the Office of the Secretary of State and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the Office of the Secretary of State.

Subd. 5. **Appeal.** A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

Subd. 6. **Liability.** The Office of the Secretary of State is not liable for damages incurred as a result of the registration of a name found to be the same or deceptively similar to another name already registered with the Office of the Secretary of State. The Office of the Secretary of State is not liable for damages that arise from the decision of the secretary of state in a contest under this section.

## **302A.115 CORPORATE NAME.**

Subd. 8. **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.

## **303.05 NAMES OF CORPORATIONS.**

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Subd. 4. **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.

#### **308A.121 COOPERATIVE NAME.**

Subd. 3. **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.

#### **308B.151 FOREIGN COOPERATIVES.**

Subdivision 1. **Authority.** (a) Subject to the Constitution of this state, the laws of the jurisdiction under which a foreign cooperative is organized govern its organization and internal affairs and the liability of its members. A foreign cooperative 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.

(b) A foreign cooperative holding a valid certificate of authority in this state has no greater rights and privileges than a domestic cooperative. The certificate of authority does not authorize the foreign cooperative to exercise any of its powers or purposes that a domestic cooperative is forbidden by law to exercise in this state.

(c) A foreign cooperative may apply for a certificate of authority under any name that would be available to a cooperative, whether or not the name is the name under which it is authorized in its jurisdiction of organization.

Subd. 2. **Certificate of authority.** (a) Before transacting business in this state, a foreign cooperative 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 business entity is organized and an application executed by an authorized person and setting forth:

(1) the name of the foreign cooperative 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 business entity, or a foreign cooperative 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 cooperative; and

(5) the date the foreign cooperative expires in the jurisdiction of its organization.

(b) 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 308B.111.

(c) 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 of state shall:

(1) endorse on the application the word "Filed" and the date of filing the application;

(2) file the original application; and

(3) return the original application to the person who filed it with a certificate of authority issued by the secretary of state.

(d) 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.

(e) If any statement in the application for a certificate of authority by a foreign cooperative was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign cooperative 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 cooperative 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 308B.121, an amendment to the certificate of authority signed by an authorized person.

The fee for filing the document is the same as for filing an amendment.

Subd. 3. **Registered agent and certain reports.** A foreign cooperative authorized to transact business in this state shall:

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(1) appoint and continuously maintain a registered agent in the same manner as provided in section 308B.121; 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 308B.121.

Subd. 4. **Biennial registration.** (a) A foreign cooperative must file a periodic registration with the secretary of state in each odd-numbered year containing:

(1) the name of the foreign cooperative;

(2) the alternate name, if any, the foreign cooperative has adopted for use in this state;

(3) the address of its registered office;

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

(5) the jurisdiction in which the foreign cooperative is organized; and

(6) the name and business address of the manager or other person exercising the principal functions of the chief manager of the foreign cooperative.

(b) The secretary of state shall mail a registration form to each foreign cooperative not 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. A foreign cooperative that 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 308B.121 applies to these amendments.

(c) A foreign cooperative that fails to file a registration under the requirements of this subdivision loses its good standing in this state. The business entity may regain its good standing in this state by filing a registration and paying a \$50 fee.

(d) If a foreign cooperative has not filed a registration during a reporting period, the secretary of state shall notify the business entity that its authority to do business in this state 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 foreign cooperative at its registered office address of record as part of the registration form. If the foreign cooperative does not file the biennial registration by the due date, the secretary of state shall revoke the authority of the foreign cooperative to do business in this state. The secretary of state shall issue a certificate of revocation, which shall be sent to the foreign cooperative at its registered office address. A copy of the certificate must be filed with the secretary of state.

(e) If a foreign cooperative has its authority to do business in this state revoked, it may retroactively reinstate its authority to do business by filing a single biennial registration and paying a \$50 fee but only within one year of the date of termination or revocation.

(f) A foreign cooperative filing the biennial registration restores the foreign cooperative's ability to do business in this state and the rights and privileges that accompany that authority.

Subd. 5. **Certificate of withdrawal.** (a) A foreign cooperative 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 cooperative shall file with the secretary of state an application for withdrawal which must set forth:

(1) the name of the foreign cooperative and the state or country under the laws of which it is organized;

(2) that the foreign cooperative is not transacting business in this state;

(3) that the foreign cooperative surrenders its authority to transact business in this state;

(4) that the foreign cooperative 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 business entity was authorized to transact business in this state. Service may be made on the business entity 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 business entity.

(b) The filing with the secretary of state of a certificate of termination or a certificate of merger if the foreign cooperative is not the surviving organization from the proper officer of the state or country under the laws of which the business entity is organized constitutes a valid application of withdrawal and the authority of the business entity to transact business in this state shall cease upon filing of the certificate.

(c) The certificate of authority of a foreign cooperative 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 cooperative 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 308B.121; or

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(2) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the foreign cooperative under this chapter.

(d) No certificate of authority of a foreign cooperative shall be revoked by the secretary of state unless:

(1) the secretary of state has given the foreign cooperative not less than 60 days' notice by mail addressed to its registered office in this state or, if the foreign cooperative 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 cooperative has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

(e) Sixty days after the mailing of the notice, the authority of the foreign cooperative 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 cooperative.

**Subd. 6. Transaction of business without certificate of authority.** (a) A foreign cooperative 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.

(b) The failure of a foreign cooperative to obtain a certificate of authority does not impair the validity of any contract or act of the foreign cooperative or prevent the foreign cooperative from defending any action, suit, or proceeding in any court of this state.

(c) A foreign cooperative, 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.

(d) A foreign cooperative 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 any amount equal to all fees that would have been imposed by this chapter upon that business entity 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.

(e) A foreign cooperative 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 director or, in the absence of directors, each member or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign cooperative that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed \$1,000.

(f) The civil penalties set forth in paragraph (e) may be recovered in an action brought in the District Court for Ramsey County by the attorney general. Upon a finding by the court that a foreign cooperative or any of its members, directors, 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 cooperative and the further exercise of any business entity's rights and privileges in this state. The foreign cooperative 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 cooperative has otherwise complied with the provisions of this chapter.

(g) A member of a foreign cooperative is not liable for the debts and obligations of the foreign cooperative solely by reason of the business entity's having transacted business in this state without a valid certificate of authority.

**Subd. 7. Transactions not constituting transacting business.** (a) The following activities of a foreign cooperative, among others, do not constitute transacting business within the meaning of this section:

(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 cooperative'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;

## APPENDIX

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(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;

(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.

(b) The term "transacting business" as used in this section has no effect on personal jurisdiction under section 543.19.

(c) For purposes of this section, any foreign cooperative that owns income-producing real or tangible personal property in this state, other than property exempted under paragraph (a), is considered to be transacting business in this state.

(d) The list of activities in paragraph (a) is not exhaustive. This subdivision does not apply in determining the contracts or activities that may subject a foreign cooperative to service of process or taxation in this state or to regulation under any other law of this state.

Subd. 8. **Action to restrain foreign cooperative.** The attorney general may bring an action to restrain a foreign cooperative from transacting business in this state in violation of this chapter, chapter 308A, or other laws of this state.

Subd. 9. **Service of process.** Service of process on a foreign cooperative must be as provided under section 5.25.

#### **317A.115 CORPORATE NAME.**

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.

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

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.