

A bill for an act

relating to the secretary of state; simplifying certain certificates issued to business entities; modifying effective date of resignations of agents; revising notice provided to organizations; allowing use of an alternate name; redefining business entities; eliminating issuance of certificates to business trusts and municipal power agencies; correcting an inadvertent error regarding nonprofit directors' conflicts of interest; amending Minnesota Statutes 2010, sections 5.001, subdivision 2, by adding a subdivision; 302A.711, subdivision 4; 302A.734, subdivision 2; 302A.751, subdivision 1; 303.08, subdivision 2; 303.17, subdivisions 2, 3, 4; 317A.255, subdivision 1; 317A.711, subdivision 4; 317A.733, subdivision 4; 317A.751, subdivision 3; 318.02, subdivisions 1, 2; 321.0809; 321.0906; 322B.826, subdivision 2; 322B.935, subdivisions 2, 3; 323A.1102; 453.53, subdivision 2; 453A.03, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 323A; repealing Minnesota Statutes 2010, sections 302A.801; 302A.805; 308A.151; 317A.022, subdivision 1; 317A.801; 317A.805; 318.02, subdivision 5.

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

Section 1. Minnesota Statutes 2010, section 5.001, subdivision 2, is amended to read:

Subd. 2. **Business entity.** "Business entity" means an organization that is formed under chapter 300, 301, 302A, 303, 308, 308A, 308B, 315, 317, 317A, ~~318~~, 319, 319A, 321, 322A, 322B, 323, or 323A and that has filed documents with the secretary of state.

Sec. 2. Minnesota Statutes 2010, section 5.001, is amended by adding a subdivision to read:

Subd. 5. **Attempt to provide notice.** "Attempt to provide notice," "attempting to provide notice," or "attempted to provide notice" as used in sections 303.17, subdivisions 2, 3, and 4; 321.0809; 321.0906; 322B.935, subdivision 3; and 323A.1004, means that the secretary of state has sent notice by mail or transmitted an e-mail to the e-mail address provided by the business entity.

Sec. 3. Minnesota Statutes 2010, section 302A.711, subdivision 4, is amended to read:

Subd. 4. **Certificate.** The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

(a) the name of the corporation;

(b) the date ~~and time~~ the articles of dissolution were filed with the secretary of state; and

(c) a statement that the corporation is dissolved.

Sec. 4. Minnesota Statutes 2010, section 302A.734, subdivision 2, is amended to read:

Subd. 2. **Certificate.** The secretary of state shall issue to the corporation or its legal representative a certificate of dissolution that contains:

(1) the name of the corporation;

(2) the date ~~and time~~ the dissolution ~~is effective~~ was filed with the secretary of state; and

(3) a statement that the corporation is dissolved ~~at the effective date and time of the dissolution~~.

Sec. 5. Minnesota Statutes 2010, section 302A.751, subdivision 1, is amended to read:

Subdivision 1. **When permitted.** A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

(a) In a supervised voluntary dissolution pursuant to section 302A.741;

(b) In an action by a shareholder when it is established that:

(1) the directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;

(2) the directors or those in control of the corporation have acted fraudulently or illegally toward one or more shareholders in their capacities as shareholders or directors, or as officers or employees of a closely held corporation;

(3) the directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation, or as officers or employees of a closely held corporation;

(4) the shareholders of the corporation 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 directors whose terms have expired or would have expired upon the election and qualification of their successors;

(5) the corporate assets are being misapplied or wasted; or

(6) the period of duration as provided in the articles has expired ~~and has not been extended as provided in section 302A.801;~~

(c) In an action by a creditor when:

(1) the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or

(2) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

(d) In an action by the attorney general to dissolve the corporation in accordance with section 302A.757 when it is established that a decree of dissolution is appropriate.

Sec. 6. Minnesota Statutes 2010, section 303.08, subdivision 2, is amended to read:

Subd. 2. **Contents.** The certificate of authority shall contain the name of the corporation, the state or country of organization, ~~the address of its registered office in this state,~~ and a statement that it is authorized to transact business in this state.

Sec. 7. Minnesota Statutes 2010, section 303.17, subdivision 2, is amended to read:

Subd. 2. **Notice to corporation.** On finding that a default has occurred under subdivision 1, clauses (1) to (3) or (5), the secretary of state shall give attempt to provide ~~notice by mail~~ to the corporation, ~~at its registered office in this state,~~ that the default exists and that its certificate of authority will be revoked unless the default shall be cured within 30 days after the mailing of the notice.

Sec. 8. Minnesota Statutes 2010, section 303.17, subdivision 3, is amended to read:

Subd. 3. **Revocation.** (a) The secretary of state shall revoke the certificate of authority of a corporation that is in default under subdivision 1, clause (4), for failure to file an annual registration form under section 303.14.

(b) The secretary of state shall revoke the certificate of authority of a corporation that is in default under subdivision 1, clauses (1) to (3) or (5), if the default is not cured within 30 days after ~~mailing the~~ attempting to provide notice under subdivision 2; provided that for good cause shown the secretary of state may extend the 30-day period from time to time, but in no event may the aggregate of all extensions granted exceed 180 days or the

period of time of any applicable extension granted by the Department of Revenue for filing the income tax return of the corporation, whichever is greater.

Sec. 9. Minnesota Statutes 2010, 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~~ attempt to provide notice of the revocation to the corporation.

(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 also make the names of the revoked corporations available in an electronic format.

Sec. 10. Minnesota Statutes 2010, section 317A.255, subdivision 1, is amended to read:

Subdivision 1. **Conflict; procedure when conflict arises.** (a) A contract or other transaction between a corporation and: (1) its director or a member of the family of its director; (2) a director of a related organization, or a member of the family of a director of a related organization; or (3) an organization in or of which the corporation's director, or a member of the family of its director, is a director, officer, or legal representative or has a material financial interest; is not void or voidable because the director or the other individual or organization are parties or because the director is present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if a requirement of paragraph (b) is satisfied.

(b) A contract or transaction described in paragraph (a) is not void or voidable if:

(1) the contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;

(2) the material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by two-thirds of the members entitled to vote, not counting any vote that the interested director might otherwise have, or 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 director's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the directors or committee members currently holding office, provided that the interested director or directors may not vote and are not considered present for purposes of a quorum. If, as a result, the number of remaining directors is not sufficient to reach a quorum, a quorum for the purpose of considering the contract or transaction is the number of remaining directors or committee members, ~~not counting any vote that the interested director might otherwise have, and not counting the director in determining the presence of a quorum~~; or

(4) the contract or transaction is a merger or consolidation described in section 317A.601.

Sec. 11. Minnesota Statutes 2010, section 317A.711, subdivision 4, is amended to read:

Subd. 4. **Certificate.** The secretary of state shall issue to the dissolved corporation a certificate of dissolution that contains:

- (1) the name of the corporation;
- (2) the date ~~and time~~ the articles of dissolution were filed with the secretary of state; and
- (3) a statement that the corporation is dissolved.

Sec. 12. Minnesota Statutes 2010, section 317A.733, subdivision 4, is amended to read:

Subd. 4. **Certificate.** The secretary of state shall issue to the dissolved corporation a certificate of dissolution that contains:

- (1) the name of the corporation;
- (2) the date ~~and time~~ the dissolution is ~~effective~~ was filed with the secretary of state; and
- (3) a statement that the corporation is dissolved at the effective date and time of the dissolution.

Sec. 13. Minnesota Statutes 2010, section 317A.751, subdivision 3, is amended to read:

Subd. 3. **Action by director or members with voting rights.** A court may grant equitable relief in an action by a director or at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, when it is established that:

- (1) the directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the members cannot break

the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;

(2) the directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers;

(3) the members of the corporation 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 directors whose terms have expired or would have expired upon the election and qualification of their successors;

(4) the corporate assets are being misapplied or wasted; or

(5) the period of duration as provided in the articles has expired ~~and has not been extended as provided in section 317A.801.~~

Sec. 14. Minnesota Statutes 2010, section 318.02, subdivision 1, is amended to read:

Subdivision 1. **Definition.** The term "declaration of trust" as used in this section means the declaration of trust, business trust instrument, trust indenture, contract of custodianship, or other instrument pursuant to which such association is organized. Every such association organized after April 20, 1961, for the purpose of transacting business in this state shall, prior to transacting any business in this state, file in the Office of the Secretary of State a true and correct copy of the "declaration of trust" under which the association proposes to conduct its business. The copy shall also contain a statement that the true and correct copy of the "declaration of trust" is being filed in the Office of the Secretary of State of the state of Minnesota pursuant to this chapter and shall also include the full name and street address of an agent of the business trust in this state. That agent shall be the agent for service of process which shall be made pursuant to the provisions of section 543.08. The "declaration of trust" may provide that the duration of such association shall be perpetual. Upon the filing of the copy of the "declaration of trust," ~~the secretary of state shall issue to such association, or to the trustees named in the said "declaration of trust," or to the persons or parties to the "declaration of trust," a certificate showing that such "declaration of trust" has been duly filed; whereupon, such association in its name shall be~~ is authorized to transact business in this state; provided that all other applicable laws have been complied with. The "declaration of trust" may be amended as provided in the "declaration of trust" or in any amendments thereto but a true and correct copy of all amendments to the "declaration of trust," shall be filed in the Office of the Secretary of State and all amendments shall become effective at the time of said filing. When such copy of the "declaration of trust" and any amendments thereto shall

have been filed in the Office of the Secretary of State it shall constitute public notice as to the purposes and manner of the business to be engaged in by such association.

Sec. 15. Minnesota Statutes 2010, section 318.02, subdivision 2, is amended to read:

Subd. 2. **Type of ~~legal entity~~ association.** Any such association heretofore or hereafter organized shall be a business trust and a separate unincorporated ~~legal entity~~ association, not a partnership, joint-stock association, agency, or any other relation except a business trust. A business trust is also known as a common law trust and Massachusetts trust for doing business.

Sec. 16. Minnesota Statutes 2010, section 321.0809, is amended to read:

321.0809 ADMINISTRATIVE DISSOLUTION.

(a) A limited partnership that has failed to deliver for filing a registration pursuant to the requirements of section 321.0210, or whose agent resigned pursuant to section 321.0116, subdivision 1, and the resignation has been effective for ~~60~~ 30 days without a new agent being appointed by the limited partnership, must be dissolved by the secretary of state as described in this section.

(b) The secretary of state must attempt to provide notice of dissolution to the limited partnership. If the limited partnership has not filed the delinquent registration or appointed a new agent within 30 days after the secretary of state attempted to provide notice to the limited partnership, 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 must also make available in an electronic format the names of the administratively dissolved limited partnerships.

(c) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 321.0803 and 321.0812 and to notify claimants under sections 321.0806 and 321.0807.

(d) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process, if any.

Sec. 17. Minnesota Statutes 2010, section 321.0906, is amended to read:

321.0906 REVOCATION OF CERTIFICATE OF AUTHORITY.

(a) A foreign limited partnership that has failed to deliver for filing a renewal pursuant to the requirements of section 321.0210, or whose agent resigned pursuant to section 321.0116, subdivision 1, and the resignation has been effective for ~~60~~ 30 days

without a new agent being appointed by the limited partnership, must have its certificate of authority to transact business in Minnesota revoked as described in this section.

(b) The secretary of state must attempt to provide notice of revocation to the foreign limited partnership. If the foreign limited partnership has not filed the delinquent registration within 30 days after the secretary of state attempted to provide notice to the foreign limited partnership, the secretary of state must issue a certificate of revocation and the certificate must be filed in the Office of the Secretary of State. The secretary of state must also make available in an electronic format the names of the foreign limited partnerships whose certificates have been revoked.

Sec. 18. Minnesota Statutes 2010, section 322B.826, subdivision 2, is amended to read:

Subd. 2. **Certificate.** The secretary of state shall issue to the 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 termination is ~~effective~~ was filed with the secretary of state; and

(3) a statement that the limited liability company is terminated at the effective date ~~and time~~ of the termination.

Sec. 19. Minnesota Statutes 2010, section 322B.935, subdivision 2, is amended to read:

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~~ attempted to provide the foreign limited liability company not less than 30 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 30-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.

Sec. 20. Minnesota Statutes 2010, section 322B.935, subdivision 3, is amended to read:

Subd. 3. **Effective date.** Upon the expiration of 30 days after the ~~mailing of the~~ secretary of state attempts to provide notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue and file a certificate of revocation and shall mail the certificate to the address of the principal

9.1 place of business or the office required to be maintained in the jurisdiction of organization
9.2 of the foreign limited liability company.

9.3 Sec. 21. **[323A.1004] REVOCATION FOR FAILURE TO REPLACE A**
9.4 **REQUIRED REGISTERED AGENT.**

9.5 If a limited liability partnership is required to list an agent for service of process in
9.6 its statement of qualification pursuant to section 323A.1001, paragraph (c), clause (3),
9.7 or 323A.1102, paragraph (a), clause (3), and that agent resigns pursuant to section 5.36,
9.8 subdivision 4, and the limited liability partnership or foreign limited liability partnership
9.9 fails to amend the statement of qualification or statement of foreign qualification to
9.10 name a new agent for service of process by the time the resignation becomes effective,
9.11 the secretary of state must attempt to provide notice to the limited liability partnership
9.12 or foreign limited liability partnership that the statement of qualification or statement of
9.13 foreign qualification will be revoked if it is not amended to name a new agent for service
9.14 of process within 30 days after the attempts to provide the notice. If the statement of
9.15 qualification or statement of foreign qualification is not amended to name a new agent for
9.16 service of process within that time, the secretary of state must revoke the statement of
9.17 qualification or statement of foreign qualification.

9.18 Sec. 22. Minnesota Statutes 2010, section 323A.1102, is amended to read:

9.19 **323A.1102 STATEMENT OF FOREIGN QUALIFICATION.**

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

9.22 (1) the name of the foreign limited liability partnership which satisfies the
9.23 requirements of the state or other jurisdiction under whose law it is formed and ends with
9.24 "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.,"
9.25 "L.L.P.," "RLLP," or "LLP." ~~If this name is unavailable, the~~ A foreign limited liability
9.26 partnership may use an alternate name to transact business in the state if it delivers to the
9.27 secretary of state a certified copy of the resolution of the partners adopting the alternate
9.28 name;

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

9.32 (3) if there is no office of the partnership in this state, the name and street address,
9.33 including the zip code, of the partnership's agent for service of process. If an agent for
9.34 service of process is listed, the limited liability partnership shall comply with section 5.36;

(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. 23. Minnesota Statutes 2010, section 453.53, subdivision 2, is amended to read:

Subd. 2. **Filing agreement, resolution; incorporation certificate.** The agency agreement and a certified copy of the resolution of the governing body of each member shall be filed for record with the secretary of state. ~~If the agency agreement conforms to the requirements of this section, the secretary of state shall record it and issue and record a certificate of incorporation. The certificate shall state the name of the municipal power agency and the fact and date of incorporation.~~ Upon the issuance of the certificate of incorporation filing of the agency agreement and a certified copy of the resolution of the governing body of each member, the existence of the municipal power agency as a political subdivision of the state and a municipal corporation shall begin. ~~The certificate of incorporation shall be conclusive evidence of the fact of incorporation.~~

Sec. 24. Minnesota Statutes 2010, section 453A.03, subdivision 2, is amended to read:

Subd. 2. **Filing agreement, resolution; certificate; incorporation.** The agency agreement and a certified copy of the resolution of the governing body of each city shall be filed for record with the secretary of state. ~~If the agency agreement conforms to the requirements of this section, the secretary of state shall record it and issue and record a certificate of incorporation. The certificate shall state the name of the municipal gas agency and the fact and date of incorporation.~~ Upon the issuance of the certificate of incorporation filing of the agency agreement and a certified copy of the resolution of

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11.1 the governing body of each member, the existence of the municipal gas agency as a
11.2 political subdivision of the state and a municipal corporation shall begin. ~~The certificate of~~
11.3 ~~incorporation shall be conclusive evidence of the fact of incorporation.~~

11.4 Sec. 25. **REPEALER.**

11.5 Minnesota Statutes 2010, sections 302A.801; 302A.805; 308A.151; 317A.022,
11.6 subdivision 1; 317A.801; 317A.805; and 318.02, subdivision 5, are repealed.