

State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1112**

03/04/2013 Authored by Winkler
The bill was read for the first time and referred to the Committee on Government Operations
03/07/2013 By motion, recalled and re-referred to the Committee on Civil Law
03/21/2013 Adoption of Report: Pass and Read Second Time
05/08/2013 Calendar for the Day, Amended
Read Third Time as Amended
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act
1.2 relating to business organizations; modifying certain duties and responsibilities
1.3 of the secretary of state; providing a standard of conduct for directors of certain
1.4 cooperatives; amending Minnesota Statutes 2012, sections 5.002; 308B.215,
1.5 subdivision 1; 321.0809; 321.0906; 321.1206; 323A.1102; 333.055, subdivision
1.6 2; 333.22, subdivision 2; 336.9-531; 336A.14; proposing coding for new law
1.7 in Minnesota Statutes, chapter 308A.

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

1.9 Section 1. Minnesota Statutes 2012, section 5.002, is amended to read:

1.10 **5.002 E-MAIL ADDRESSES.**

1.11 (a) The secretary of state is authorized to provide a field on each of the forms and on
1.12 each online entry screen, used to file business entity filings, Uniform Commercial Code
1.13 records, and central notification system filings, for the collection of an e-mail address to
1.14 which the secretary of state can forward official notices required by law and other notices
1.15 to the business entity, assumed name, or the person filing the Uniform Commercial Code
1.16 or central notification system record. The e-mail address may be updated by or on behalf
1.17 of the business entity by sending a notification of the change to the secretary of state. No
1.18 fee shall be charged for an e-mail address update.

1.19 (b) Except as provided in paragraph (c), the business entity, holder of assumed
1.20 name, or other person providing the e-mail address under this section may indicate on
1.21 the screen that they do not wish the e-mail address provided under this section to be
1.22 provided as bulk data.

1.23 (c) If the e-mail address in paragraph (b) is provided to the requester as a portion of
1.24 a digitally scanned or digitally created image, as part of a specific request for the records
1.25 of the entity or of a specific lien debtor, the e-mail address on that image is public.

2.1 Sec. 2. **[308A.328] STANDARD OF CONDUCT.**

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

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

2.10 (1) one or more officers or employees of the cooperative who the director reasonably
2.11 believes to be liable and competent in the matters presented;

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

2.14 (3) a committee of the board upon which the director does not serve, duly established
2.15 by the board, as to matters within its designated authority, if the director reasonably
2.16 believes the committee to merit confidence.

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

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

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

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

2.28 (3) is prohibited by a conflict of interest from voting on the action.

2.29 Subd. 4. **Considerations.** In discharging the duties of the position of director, a
2.30 director may, in considering the best interests of the cooperative, consider the interests
2.31 of the cooperative's employees, customers, suppliers, and creditors, the economy of the
2.32 state, and long-term as well as short-term interests of the cooperative and its patron
2.33 members, including the possibility that these interests may be best served by the continued
2.34 independence of the cooperative.

3.1 Subd. 5. **Relation to other law.** Notwithstanding any other provision of law, a
3.2 director of a cooperative organized and operating under this chapter is governed by the
3.3 standard of conduct under this section.

3.4 Sec. 3. Minnesota Statutes 2012, section 308B.215, subdivision 1, is amended to read:

3.5 Subdivision 1. **Requirements.** (a) The articles of the cooperative shall include:

3.6 (1) the name of the cooperative;

3.7 (2) the purpose of the cooperative;

3.8 (3) the name and address of each organizer;

3.9 (4) the period of duration for the cooperative, if the duration is not to be perpetual;

3.10 (5) the name of the registered agent, if any; and

3.11 (6) the address of the registered office.

3.12 (b) The articles may contain any other lawful provision.

3.13 (c) The articles shall be signed by the organizers.

3.14 Sec. 4. Minnesota Statutes 2012, section 321.0809, is amended to read:

3.15 **321.0809 ADMINISTRATIVE DISSOLUTION.**

3.16 (a) A limited partnership that has failed to deliver for filing a registration pursuant
3.17 to the requirements of section 321.0210, or whose agent resigned pursuant to section
3.18 321.0116, subdivision 1, and the resignation has been effective for 30 days without a new
3.19 agent being appointed by the limited partnership, must be dissolved by the secretary of
3.20 state as described in this section.

3.21 (b) The secretary of state must attempt to provide notice of dissolution to the each
3.22 limited partnership whose agent resigned pursuant to section 321.0116, subdivision 1, if
3.23 the resignation of the agent has been effective for 30 days without a new agent being
3.24 appointed by the limited partnership. If the limited partnership has not ~~filed the delinquent~~
3.25 ~~registration or~~ appointed a new agent within 30 days after the secretary of state attempted
3.26 to provide notice to the limited partnership, or if the limited partnership has not filed the
3.27 delinquent registration, the secretary of state must issue a certificate of administrative
3.28 dissolution and the certificate must be filed in the Office of the Secretary of State. The
3.29 secretary of state must also make available in an electronic format the names of the
3.30 administratively dissolved limited partnerships.

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

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

4.3 Sec. 5. Minnesota Statutes 2012, section 321.0906, is amended to read:

4.4 **321.0906 REVOCATION OF CERTIFICATE OF AUTHORITY.**

4.5 (a) A foreign limited partnership that has failed to deliver for filing a renewal
4.6 pursuant to the requirements of section 321.0210, or whose agent resigned pursuant to
4.7 section 321.0116, subdivision 1, and the resignation has been effective for 30 days without
4.8 a new agent being appointed by the limited partnership, must have its certificate of
4.9 authority to transact business in Minnesota revoked as described in this section.

4.10 (b) The secretary of state must attempt to provide notice of revocation to ~~the~~
4.11 each foreign limited partnership, whose agent resigned pursuant to section 321.0116,
4.12 subdivision 1, if the resignation of the agent has been effective for 30 days without a
4.13 new agent being appointed by the limited partnership. If the foreign limited partnership
4.14 has not filed ~~the delinquent registration~~ appointed a new agent within 30 days after the
4.15 secretary of state attempted to provide notice to the foreign limited partnership, or if the
4.16 foreign limited partnership has not filed the delinquent registration, the secretary of state
4.17 must issue a certificate of revocation and the certificate must be filed in the Office of the
4.18 Secretary of State. The secretary of state must also make available in an electronic format
4.19 the names of the foreign limited partnerships whose certificates have been revoked.

4.20 Sec. 6. Minnesota Statutes 2012, section 321.1206, is amended to read:

4.21 **321.1206 APPLICATION TO EXISTING RELATIONSHIPS.**

4.22 (a) Beginning January 1, 2005, no person may use chapter 322A to form an entity.

4.23 (b) Before January 1, 2007, this chapter governs only:

4.24 (1) a limited partnership formed on or after January 1, 2005; and

4.25 (2) except as otherwise provided in subsection (d):

4.26 (i) a limited partnership formed under chapter 322A which elects, in the manner
4.27 provided in its partnership agreement or by law for amending the partnership agreement,
4.28 to be subject to this chapter; and

4.29 (ii) a limited partnership formed under chapter 322, if the limited partnership elects
4.30 pursuant to subsection (f) to be subject to this chapter.

4.31 (c) Except as otherwise provided in subsection (d), on and after January 1, 2007,
4.32 this chapter governs:

4.33 (1) any limited partnership formed under chapter 322A which has not previously
4.34 elected to be governed by this chapter and is still in existence on January 1, 2007; and

5.1 (2) all limited partnerships, except for limited partnerships formed under chapter
5.2 322 that have not previously elected to become governed by this chapter or chapter 322A,
5.3 including each limited partnership formed under chapter 322A which has previously
5.4 elected to become governed by this chapter and each limited partnership formed under
5.5 chapter 322 which has elected, previously or otherwise, to be governed by this chapter.

5.6 (d) With respect to a limited partnership formed before January 1, 2005, the
5.7 following rules apply except as the partners otherwise elect in the manner provided in the
5.8 partnership agreement or by law for amending the partnership agreement:

5.9 (1) section 321.0104(c) does not apply and the limited partnership has whatever
5.10 duration it had under the law applicable immediately before the limited partnership became
5.11 subject to this chapter, as reflected solely in the certificate of limited partnership and
5.12 amendments to it, notwithstanding other notations in the record of the secretary of state;

5.13 (2) the limited partnership is not required to amend its certificate of limited
5.14 partnership to comply with section 321.0201(a)(4);

5.15 (3) sections 321.0601 and 321.0602 do not apply and a limited partner has the same
5.16 right and power to dissociate from the limited partnership, with the same consequences, as
5.17 existed immediately before the limited partnership became subject to this chapter;

5.18 (4) section 321.0603(4) does not apply;

5.19 (5) section 321.0603(5) does not apply and a court has the same power to expel
5.20 a general partner as the court had immediately before the limited partnership became
5.21 subject to this chapter; and

5.22 (6) section 321.0801(3) does not apply and the connection between a person's
5.23 dissociation as a general partner and the dissolution of the limited partnership is the same
5.24 as existed immediately before the limited partnership became subject to this chapter.

5.25 (e) If subsection (c) causes a limited partnership that is a limited liability limited
5.26 partnership under section 322A.88 to become subject to this chapter:

5.27 (1) if immediately before the limited partnership that is a limited liability limited
5.28 partnership under section 322A.88 became subject to this chapter its name complied with
5.29 section 322A.02, the limited partnership may maintain its name even if the name does
5.30 not comply with section 321.0108(c); and

5.31 (2) the statement of qualification of the limited partnership that is a limited liability
5.32 limited partnership under section 322A.88, on file with the secretary of state pursuant to
5.33 section 322A.88(a)(2), is deemed to amend the limited partnership's certificate of limited
5.34 partnership to state that the limited partnership is a limited liability limited partnership.

5.35 (f) On or after January 1, 2005, a limited partnership formed under chapter 322 may
5.36 become subject to this chapter if:

6.1 (1) it elects, in the manner provided in its partnership agreement or by law for
6.2 amending the partnership agreement, to be subject to this chapter;

6.3 (2) neither its certificate of limited partnership nor its partnership agreement prohibit
6.4 the election;

6.5 (3) its certificate of limited partnership, on file with the county recorder, is amended
6.6 to state the election and, as may be necessary, to comply with this chapter; and

6.7 (4) a certified copy of the amended certificate of limited partnership, and of all
6.8 other limited partnership documents previously filed with the county recorder, is filed
6.9 with the secretary of state.

6.10 Sec. 7. Minnesota Statutes 2012, section 323A.1102, is amended to read:

6.11 **323A.1102 STATEMENT OF FOREIGN QUALIFICATION.**

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

6.14 (1) the name of the foreign limited liability partnership which satisfies the
6.15 requirements of the state or other jurisdiction under whose law it is formed and ends with
6.16 "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.,"
6.17 "L.L.P.," "RLLP," or "LLP." A foreign limited liability partnership may use an alternate
6.18 name to transact business in the state if it ~~delivers to the secretary of state a certified copy~~
6.19 ~~of the resolution of the partners adopting the alternate name~~ lists the alternate name in
6.20 the statement;

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

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

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

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

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

6.33 (c) The status of a partnership as a foreign limited liability partnership is effective on
6.34 the later of the filing of the statement of foreign qualification or a date specified in the

7.1 statement. The status remains effective, regardless of changes in the partnership, until it is
7.2 canceled pursuant to section 323A.0105(d) or revoked pursuant to section 323A.1003.

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

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

7.8 Sec. 8. Minnesota Statutes 2012, section 333.055, subdivision 2, is amended to read:

7.9 Subd. 2. **Reinstatement.** Any assumed name certificate that expires as a result of
7.10 failing to file the annual renewal, and any assumed name certificate filed prior to September
7.11 5, 2011, that expires because of the expiration of the original or renewed ten-year term,
7.12 may be reinstated by filing the annual renewal with the \$25 reinstatement fee.

7.13 Sec. 9. Minnesota Statutes 2012, section 333.22, subdivision 2, is amended to read:

7.14 Subd. 2. **Renewal notice.** The secretary of state shall notify each registrant of a
7.15 mark hereunder of the necessity of renewal thereof ~~by writing to the last known address of~~
7.16 ~~the registrant~~ approximately six months prior to the registration's expiration date.

7.17 Sec. 10. Minnesota Statutes 2012, section 336.9-531, is amended to read:

7.18 **336.9-531 ELECTRONIC ACCESS; LIABILITY; RETENTION.**

7.19 (a) **Electronic access.** The secretary of state may allow private parties to have
7.20 electronic access to the central filing system and to other computerized records maintained
7.21 by the secretary of state on a fee basis, except that: (1) visual access to electronic display
7.22 terminals at the public counters at the Secretary of State's Office must be without charge
7.23 and must be available during public counter hours; and (2) access by law enforcement
7.24 personnel, acting in an official capacity, must be without charge. If the central filing
7.25 system allows a form of electronic access to information regarding the obligations of
7.26 debtors, the access must be available 24 hours a day, every day of the year.

7.27 A Social Security number ~~or tax identification number~~ maintained by the secretary
7.28 of state under this section is private data on individuals or nonpublic data, as defined in
7.29 section 13.02.

7.30 (b) **Liability.** The secretary of state, county recorders, and their employees and
7.31 agents are not liable for any loss or damages arising from errors in or omissions from
7.32 information entered into the central filing system as a result of the electronic transmission

8.1 of tax lien notices under sections 268.058, subdivision 1, paragraph (c); 270C.63,
8.2 subdivision 4; 272.483; and 272.488, subdivisions 1 and 3.

8.3 The state, the secretary of state, counties, county recorders, and their employees and
8.4 agents are immune from liability that occurs as a result of errors in or omissions from
8.5 information provided from the central filing system.

8.6 (c) **Retention.** Once the image of a paper record has been captured by the central
8.7 filing system, the secretary of state may remove or direct the removal from the files and
8.8 destroy the paper record.

8.9 Sec. 11. Minnesota Statutes 2012, section 336A.14, is amended to read:

8.10 **336A.14 RESTRICTED USE OF INFORMATION.**

8.11 A Social Security number ~~or tax identification number~~ maintained by the secretary
8.12 of state under this section is private data on individuals or nonpublic data, as defined in
8.13 section 13.02. Information obtained from the seller of a farm product relative to the Social
8.14 Security number or tax identification number of the true owner of the farm product and all
8.15 information obtained from the master or limited list may not be used for purposes that are
8.16 not related to: (1) purchase of a farm product; (2) taking a security interest against a farm
8.17 product; or (3) perfecting a farm product statutory lien.