

**CHAPTER 98—S.F.No. 1288**

*An act relating to commerce; regulating various filings, forms, records, submissions, motions, and orders relating to duties and responsibilities of the secretary of state; amending Minnesota Statutes 2008, sections 5.15; 5.23, subdivisions 1, 4; 5.26, subdivision 1; 270C.63, subdivision 4; 272.488, subdivision 2; 302A.115, subdivision 1; 302A.151; 303.06; 303.11; 308A.121, subdivision 1; 308B.211, subdivision 1; 308B.215; 317A.115, subdivision 2; 321.0108; 321.0809; 321.0902; 321.0906; 321.0909; 322B.12, subdivision 1; 322B.91, subdivision 1; 322B.92; 336.9-519; 336.9-521; 336.9-525; 336A.03, subdivision 3; 336A.09, subdivision 1; 545.05, subdivisions 1, 2, 4, 7, 10, 11, 13; proposing coding for new law in Minnesota Statutes, chapter 5; repealing Minnesota Statutes 2008, sections 5.03; 308B.121, subdivision 3; Minnesota Rules, part 8280.0470.*

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

Section 1. Minnesota Statutes 2008, section 5.15, is amended to read:

**5.15 ONLINE SIGNATURES, ACKNOWLEDGMENT OR NOTARIZATION ON DOCUMENTS; PENALTIES OF PERJURY.**

(a) No document submitted to the Office of the Secretary of State shall be required to be notarized. Signing a document submitted to the secretary of state constitutes "acknowledgment" as defined in section 358.41, clause (2), and "verification upon oath or affirmation" as defined in section 358.41, clause (3). A person who signs a document submitted to the secretary of state without authority to sign that document or who signs the document knowing that the document is false in any material respect is subject to the penalties of perjury set forth in section 609.48.

(b) Any document submitted to the Office of the Secretary of State online may be signed by any person as agent of any person whose signature is required by law. The signing party must indicate on the application that they are acting as the agent of the person whose signature would be required and that they have been authorized to sign on behalf of the applicant. The name of the person signing, entered on the online application, constitutes a valid signature by such an agent.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 2. Minnesota Statutes 2008, section 5.23, subdivision 1, is amended to read:

Subdivision 1. **Failure to pay filing fee.** If a person files an instrument authorized to be filed with the secretary of state ~~has been submitted~~ with a payment order or item that is rejected or dishonored, the secretary ~~must remove the instrument from the public record of state~~ is authorized to refuse the filing of further instruments submitted by that person

or on behalf of the business entity or notary on whose behalf the prior instrument was filed or relating to the same assumed name or trademark filing. The secretary may also pursue collection of the rejected or dishonored payment order or item and recover the face amount of the payment order or item, any service fee, and any additional collection costs incurred to collect the amount. If the payment order or item is honored, ~~the instrument must be returned to the public record~~ or the delinquent amount is paid, the secretary of state must resume filing instruments submitted by that person or on behalf of that business entity or notary or relating to the same assumed name or trademark filing as of the date the payment order or item is honored and an instrument is presented for filing. The secretary may impose restrictions on the manner of payment that will be accepted for any future filings. ~~This subdivision does not apply to financing statements filed under chapter 336.~~ This subdivision does not apply to financing statements filed under chapter 336 or to an effective financing statement or lien notice filed under chapter 336A.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 3. Minnesota Statutes 2008, section 5.23, subdivision 4, is amended to read:

Subd. 4. **Collection of all amounts.** The secretary of state must collect the face amount of the rejected or dishonored payment order or item, any service fee, and all costs of collection in every possible instance. Collection must occur whether or not the ~~instrument is returned to the public record or~~ the customer continues to receive the information products or access to the database. Uncollectible payment orders and items must be processed according to applicable Minnesota law.

Sec. 4. Minnesota Statutes 2008, section 5.26, subdivision 1, is amended to read:

Subdivision 1. **Definition.** "Good standing" means that a business entity or other filer of an assumed name or trademark filing has complied with all of the filing and registration requirements with the Office of the Secretary of State described in the entity's governing chapter. A business entity or other filer of an assumed name or trademark filing that has submitted, or on whose behalf has been submitted, a payment order or item that is rejected or dishonored, is not in good standing until the payment or item is honored or the delinquent amount is paid. The secretary of state shall note on the record of the business entity whether it is in good standing.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 5. **[5.35] AUTOMATIC NAME RESERVATION.**

Upon the dissolution or termination of the filing of any business entity for failure to file the annual renewal, the secretary of state shall automatically file a name reservation to hold that name on behalf of the dissolved or terminated entity for a period of one year from the date of the dissolution or termination.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 6. Minnesota Statutes 2008, section 270C.63, subdivision 4, is amended to read:

Subd. 4. **Entry of information into central database.** County recorders and the secretary of state shall enter information relative to lien notices, transcriptions, renewals, and releases filed in their offices into the central database of the secretary of state. For notices filed electronically with the county recorders, the date and time of ~~receipt~~ transmission of the notice and county recorder's file number, and for notices filed electronically with the secretary of state, the secretary of state's recording information, must be entered by the filing officer into the central database before the close of the working day following the day of the original data entry by the department. For notices filed electronically with the county recorder, the date and time of filing is no later than 5:00 p.m. on the business day following transmission of the notice by the secretary of state.

Sec. 7. Minnesota Statutes 2008, section 272.488, subdivision 2, is amended to read:

Subd. 2. **Central database.** County recorders and the secretary of state shall enter information relative to lien notices, releases, revocations of release, and refilings of any of those items into the computerized database system of the secretary of state. For notices transmitted electronically for filing with the county recorders, the date and time of filing of the notice and county recorder's file number, and for notices transmitted electronically for filing with the secretary of state, the secretary of state's filing information, must be entered by the filing officer into the computerized database system before the close of the fifth working day following the day of the original data transmission to the filing officer ~~by the Internal Revenue Service.~~ When notices are transmitted electronically, the filing officer must file the notices no later than 5:00 p.m. on the business day after they were transmitted to the filing officer ~~by the Internal Revenue Service.~~ All other processing by the county recorder of lien notices, releases, revocations of release and refilings of any of those items must occur within the time period allowed in section 386.30.

Sec. 8. Minnesota Statutes 2008, section 302A.115, subdivision 1, is amended to read:

Subdivision 1. **Requirements; prohibitions.** The corporate name:

(a) Shall be in the English language or in any other language expressed in English letters or characters;

(b) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&;

(c) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;

(d) 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 on file, authorized or registered to do business in this state at the time of filing, whether profit or nonprofit, and each name the right to which is, at the time of incorporation, reserved as provided for in sections 5.35, 302A.117, 321.0109, 322B.125, or 333.001 to 333.54, unless there is filed with the articles 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign corporation, limited partnership, or limited liability company shown in the records of the secretary of state or has been unable 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 domestic or foreign 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.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 9. Minnesota Statutes 2008, section 302A.151, is amended to read:

**302A.151 FILING ARTICLES.**

Unless filed with the commissioner of commerce, pursuant to other law, articles of incorporation and articles of amendment shall be filed with the secretary of state.

Sec. 10. Minnesota Statutes 2008, section 303.06, is amended to read:

**303.06 APPLICATION FOR CERTIFICATE OF AUTHORITY.**

Subdivision 1. **Contents.** In order to procure a certificate of authority to transact business in this state, a foreign corporation shall make application therefor to the secretary of state, which application shall set forth:

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

(2) if the name of the corporation does not comply with section 303.05, then the name which it agrees to use in this state;

(3) the address of its proposed registered office in this state and the name of its proposed registered agent in this state;

(4) that it irrevocably consents to the service of process upon it as set forth in section 5.25, or any amendment thereto; ~~and~~

(5) a statement that the officers executing the application have been duly authorized so to do by the board of directors of the corporation; ~~and~~

(6) that the corporation has complied with the organizational laws in the jurisdiction in which it is organized.

Subd. 2. **Forms.** Such application shall be made on forms prescribed and furnished by the secretary of state, and shall be executed by its president, vice-president, secretary, or assistant secretary, ~~and delivered to the secretary of state with a certificate of existence from the filing officer in the state, province, or country of incorporation.~~

Sec. 11. Minnesota Statutes 2008, 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, 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 foreign corporation is organized has changed its name, dissolved, or merged and is listing its new status and name.~~

Sec. 12. Minnesota Statutes 2008, section 308A.121, subdivision 1, is amended to read:

Subdivision 1. **Name.** The name of a cooperative must distinguish the cooperative upon the records in the Office of the Secretary of State from the name of a domestic corporation, whether profit or nonprofit, or a limited partnership, or a foreign corporation or a limited partnership ~~authorized or registered to do business in this state, whether profit or nonprofit, a limited liability company, whether domestic or foreign, a limited liability partnership, whether domestic or foreign, on file, authorized or registered to do business in this state at the time of filing~~ or a name the right to which is, at the time of incorporation, reserved or provided for in sections 5.35, 302A.117, 317A.117, 321.0109, 322B.125, or 333.001 to 333.54.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 13. Minnesota Statutes 2008, section 308B.211, subdivision 1, is amended to read:

Subdivision 1. **Distinguished name.** The name of a cooperative shall distinguish the cooperative upon the records in the Office of the Secretary of State from the name of a domestic business entity or a foreign business entity, on file, authorized or registered to do business in this state at the time of filing, or a name the right to which is, at the time of organization, reserved or provided for by law.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 14. Minnesota Statutes 2008, section 308B.215, is amended to read:

**308B.215 ARTICLES OF ORGANIZATION.**

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

- (1) the name of the cooperative;
- (2) the purpose of the cooperative;
- (3) the name and address of each organizer; ~~and~~
- (4) the period of duration for the cooperative, if the duration is not to be perpetual;
- (5) the name of the registered agent; and
- (6) the address of the registered office.

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

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

Subd. 2. **Filing.** The original articles ~~and a designation of the cooperative's registered office and agent~~ shall be filed with the secretary of state. The fee for filing the articles with the secretary of state is \$60.

Subd. 3. **Effect of filing.** When the articles, ~~the registration form under section 308B.121, and the designation of the cooperative's registered office and agent~~ have been filed with the secretary of state and the required fee has been paid to the secretary of state, it shall be presumed that:

(1) all conditions precedent that are required to be performed by the organizers have been complied with;

(2) the organization of the cooperative has been chartered by the state as a separate legal entity; and

(3) the secretary of state shall issue a certificate of organization to the cooperative.

**EFFECTIVE DATE.** This section is effective retroactively from January 1, 2009.

Sec. 15. Minnesota Statutes 2008, section 317A.115, subdivision 2, is amended to read:

Subd. 2. **Name must be distinguishable.** (a) A corporate name must be distinguishable upon the records in the Office of the Secretary of State from the name of a domestic corporation or limited partnership, a foreign corporation or limited partnership ~~authorized or registered to do business in this state~~, whether profit or nonprofit, a limited liability company, whether domestic or foreign, on file, authorized to do business in this state at the time of filing, a limited liability partnership, whether domestic or foreign, or a name the right to which is, at the time of incorporation, reserved, registered, or provided for in section 5.35, 317A.117, 302A.117, 321.0109, 322B.125, or sections 333.001 to 333.54, unless one of the following is filed with the articles:

- (1) the written consent of the organization having the 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 use its corporate name in this state; or
- (3) an affidavit of nonuse of the kind required by section 302A.115, subdivision 1, paragraph (d), clause (3).

(b) The secretary of state shall determine whether a name is distinguishable from another name for purposes of this section and section 317A.117.

(c) This subdivision does not affect the right of a corporation existing on January 1, 1991, or a foreign corporation authorized to do business in this state on that date, to use its corporate name.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 16. Minnesota Statutes 2008, 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(e)(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 on file, authorized or registered to do business in this state at the time of filing, whether profit or nonprofit, and each name the right to which is, at the time of formation, reserved as provided for in sections 5.35, 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 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.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 17. Minnesota Statutes 2008, 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 must be dissolved by the secretary of state as described in this section.

(b) If the limited partnership has not filed the delinquent registration, 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 annually inform the attorney general and the commissioner of revenue of the methods by which the names of limited partnerships administratively 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 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.

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

Sec. 18. Minnesota Statutes 2008, section 321.0902, is amended to read:

**321.0902 APPLICATION FOR CERTIFICATE OF AUTHORITY.**

~~(a)~~ A foreign limited partnership may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

(1) the name of the foreign limited partnership and, if the name does not comply with section 321.0108, an alternate name adopted pursuant to section 321.0905(a);

(2) the name of the state or other jurisdiction under whose law the foreign limited partnership is organized;

(3) the street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office;

(4) the name and street and mailing address of the foreign limited partnership's initial agent for service of process in this state;

(5) the name and street and mailing address of each of the foreign limited partnership's general partners; ~~and~~

(6) whether the foreign limited partnership is a foreign limited liability limited partnership; and

~~(b) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized.~~

(7) that the foreign limited partnership has complied with the organizational laws in the jurisdiction in which it is organized.

Sec. 19. Minnesota Statutes 2008, 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 ~~registration~~ renewal pursuant to the requirements of section 321.0210 must have its certificate of authority to transact business in Minnesota revoked as described in this section.

(b) If the foreign limited partnership has not filed the delinquent registration, 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 annually inform the attorney general and the commissioner of revenue of the methods by which the names of limited partnerships whose certificates of authority have been revoked 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 foreign limited partnerships whose certificates have been revoked.

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

Sec. 20. Minnesota Statutes 2008, section 321.0909, is amended to read:

**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~~ secretary of state that the foreign limited partnership has changed the name and is listing the new name.

Sec. 21. Minnesota Statutes 2008, section 322B.12, subdivision 1, is amended to read:

Subdivision 1. **Requirements and prohibitions.** The limited liability company name must:

(1) be in the English language or in any other language expressed in English letters or characters;

(2) contain the words "limited liability company," or must contain the abbreviation "LLC" or, in the case of an organization formed pursuant to chapter 319B, must meet the requirements of section 319B.05 applicable to a limited liability company;

(3) not contain the word corporation or incorporated and must not contain the abbreviation of either or both of these words;

(4) not contain a word or phrase that indicates or implies that it is organized for a purpose other than a legal business purpose; and

(5) be distinguishable upon the records in the Office of the Secretary of State from the name of each domestic limited liability company, limited liability partnership, corporation, and limited partnership, whether profit or nonprofit, and each foreign limited liability company, limited liability partnership, corporation, and limited partnership on file, authorized or registered to do business in this state at the time of filing, whether profit or nonprofit, and each name the right to which is, at the time of organization, reserved as provided for in sections 5.35, 302A.117, 317A.117, 321.0109, 322B.125, or 333.001 to 333.54, unless there is filed with the articles of organization one of the following:

(i) the written consent of the domestic limited liability company, limited liability partnership, corporation, or limited partnership or the foreign limited liability company, limited liability partnership, corporation, or limited partnership 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;

(ii) 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

(iii) the applicant's affidavit that the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership with the name that is not distinguishable has been organized, incorporated, or on file in this state for at least three years prior to the affidavit, if it is a domestic limited liability company, corporation, or limited partnership, 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 limited liability company, corporation, or limited partnership, 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 domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership 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 domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership 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 domestic or foreign limited liability company or domestic or foreign corporation or in care of the agent of the domestic or foreign 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 of the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership 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 domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership with the name that is not distinguishable in the county in which is located the registered office of the domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership shown in the records of the secretary of state or has been unable 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 domestic or foreign limited liability company, domestic or foreign corporation, or domestic or foreign limited partnership 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.

**EFFECTIVE DATE.** This section is effective 30 days after the secretary of state certifies that the information systems of the Office of the Secretary of State have been modified to implement this section.

Sec. 22. Minnesota Statutes 2008, section 322B.91, subdivision 1, is amended to read:

Subdivision 1. **Application information.** Before transacting business in this state, a foreign limited liability company 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 foreign limited liability company is organized and an application executed by an authorized person and setting forth:~~

(1) the name of the foreign limited liability company 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 corporation, or a foreign corporation 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 limited liability company; ~~and~~

(5) the date the foreign limited liability company expires in the jurisdiction of its organization; and

(6) that the foreign limited liability company has complied with the organizational laws in the jurisdiction of its organization.

Sec. 23. Minnesota Statutes 2008, section 322B.92, is amended to read:

**322B.92 AMENDMENTS TO THE CERTIFICATE OF AUTHORITY.**

If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company 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 statement~~ to that effect authenticated by the proper officer of ~~the state or country under the laws of which~~ the foreign limited liability company ~~is organized~~;

(2) in the case of a change in the name or address of the registered agent required to be maintained by section 322B.925, an amendment to the certificate of authority signed by an authorized person; or

(3) in the case of an election, rescission, or change in the specification of professional services under section 319B.04, a notice which:

(i) states the election, rescission, or change in specification;

(ii) has been approved in accordance with the foreign limited liability company's generally applicable governing law, as that term is defined in section 319B.02, subdivision 8; and

(iii) has been signed on behalf of the foreign limited liability company.

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

Sec. 24. Minnesota Statutes 2008, section 336.9-519, is amended to read:

**336.9-519 NUMBERING, MAINTAINING, AND INDEXING RECORDS;  
COMMUNICATING INFORMATION PROVIDED IN RECORDS.**

(a) **Filing office duties.** For each record filed in a filing office, the filing office shall:

(1) assign a unique number to the filed record;

(2) create a record that bears the number assigned to the filed record and the date and time of filing;

(3) maintain the filed record for public inspection; and

(4) index the filed record in accordance with subsections (c), (d), and (e).

(b) **File number.** A file number assigned after July 1, 2001, must include a digit that:

(1) is mathematically derived from or related to the other digits of the file number; and

(2) enables the filing office to detect whether a number communicated as the file number includes a single-digit or transpositional error.

The first four digits of the number need not reflect the year of filing.

(c) **Indexing: general.** Except as otherwise provided in subsections (d) and (e), the filing office shall:

(1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) **Indexing: real property-related financing statement.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) to the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) **Indexing: real property-related assignment.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 336.9-514(a) or an amendment filed under section 336.9-514(b):

(1) under the name of the assignor as grantor; and

(2) to the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) **Retrieval and association capability.** The filing office shall maintain a capability:

(1) to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) **Removal of debtor's name.** The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 336.9-515 with respect to all secured parties of record.

(h) **Timeliness of filing office performance.** The filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing office rule, but not later than two business days after the filing office receives the record in question.

(i) **Inapplicability to real property-related filing office.** Subsections (b) and (h) do not apply to a filing office described in section 336.9-501(a)(1).

Sec. 25. Minnesota Statutes 2008, section 336.9-521, is amended to read:

**336.9-521 UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT.**

(a) **Initial financing statement form.** A filing office that accepts written records may not refuse to accept a written initial financing statement in the form and format adopted by the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in section 336.9-516(b).

(b) **Amendment form.** A filing office that accepts written records may not refuse to accept a written amendment of an initial financing statement record in the form and format adopted by the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in section 336.9-516(b).

(c) Forms adopted by the International Association of Commercial Administrators are accepted for filing, except for a reason set forth in section 336.9-516(b).

Sec. 26. Minnesota Statutes 2008, 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 is \$20. \$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 and providing images of that financing statement, if requested, is \$20. \$5 of the fee collected for each request delivered 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 financing statement covering as-extracted collateral or timber to be cut under section 336.9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

Sec. 27. Minnesota Statutes 2008, section 336A.03, subdivision 3, is amended to read:

Subd. 3. **Signatures.** A lien notice must be signed, authorized, or otherwise authenticated by the lienholder. An effective financing statement must be signed, authorized, or otherwise authenticated by:

(1) the secured party; and

(2) the debtor, except that an effective financing statement filed online need not be signed by the debtor if the secured party obtains the debtor's signature on a paper effective financing statement for this lien.

Sec. 28. Minnesota Statutes 2008, section 336A.09, subdivision 1, is amended to read:

Subdivision 1. **Procedure.** (a) Oral and written inquiries regarding information provided by the filing of effective financing statements or lien notices may be made at any filing office during regular business hours.

(b) A filing office receiving an oral or written inquiry shall, upon request, provide an oral or facsimile response to the inquiry ~~and must send a confirmation of the inquiry in writing by the end of the next business day after the inquiry is received.~~

(c) A filing office shall maintain a record of inquiries made under this section including:

- (1) the date of the inquiry;
- (2) the name of the debtor inquired about; and
- (3) identification of the person making the request for inquiry.

Sec. 29. Minnesota Statutes 2008, section 545.05, subdivision 1, is amended to read:

Subdivision 1. **Definitions Scope.** (a) As used in this section, a financing statement or other record filed in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code - Secured Transactions to perfect a security interest is fraudulent or otherwise improper if it is filed without the authorization of the obligor, person named as debtor, or owner of collateral described or indicated in the financing statement or other record, or by consent of an agent, fiduciary, or other representative of that person or without the consent of the secured party of record in the case of an amendment or termination.

(b) All other financing statements filed in the manner provided by sections 336.9-501 to 336.9-531 to perfect agricultural liens or for purposes outside of the Uniform Commercial Code - Secured Transactions are also fraudulent or otherwise improper and subject to this section if there is no statutory or other legal authority therefor.

~~(b)~~ (c) As used in this section, filing office or filing officer refers to the office or officer where a financing statement or other record is appropriately filed or recorded as provided by law, including, but not limited to, the county recorder, the secretary of state, and other related filing officers.

Sec. 30. Minnesota Statutes 2008, section 545.05, subdivision 2, is amended to read:

Subd. 2. **Motion.** An obligor, person named as a debtor, or owner of collateral described or indicated in a financing statement or other record filed ~~under in the manner provided by sections 336.9-101 to 336.9-709 (Uniform Commercial Code - Secured Transactions)~~ 336.9-501 to 336.9-531, who has reason to believe that the financing statement or other record is fraudulent or otherwise improper may complete and file at any time a motion for judicial review of the effectiveness of the financing statement or other record. A secured party of record who believes that an amendment or termination of a financing statement or other record is fraudulent or otherwise improper may also file a motion.

Sec. 31. Minnesota Statutes 2008, section 545.05, subdivision 4, is amended to read:

Subd. 4. **Motion form.** The motion must be in substantially the following form:

In Re: A Purported Financing Statement in the district court of ..... County, Minnesota, Against [Name of person who filed the financing statement]

MOTION FOR JUDICIAL REVIEW OF A FINANCING STATEMENT FILED UNDER  
THE UNIFORM COMMERCIAL CODE - SECURED TRANSACTIONS

..... (name of moving party) files this motion requesting a judicial determination of the effectiveness of a financing statement or other record filed under in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code - Secured Transactions in the office of the ..... (filing office and location) and in support of the motion provides as follows:

I.



..... (name), the moving party, is the [obligor, person named as a debtor, or owner of collateral described or indicated in] [secured party of record listed in] a financing statement or other record filed ~~under~~ in the manner provided in sections 336.9-501 to 336.9-531 of the Uniform Commercial Code.

## II.

On ..... (date), in the exercise of the filing officer's official duties as ..... (filing officer's position), the filing officer received and filed or recorded the financing statement or other record, a copy which is attached, that purports to [perfect a security interest or agricultural lien against the obligor, person named as debtor, or the owner of collateral described or indicated in the financing statement or other record] ~~or~~ [amend or terminate the financing statement in which the moving party is listed as the secured party of record] [be for a purpose outside of the Uniform Commercial Code - Secured Transactions].

## III.

The moving party alleges that the financing statement or other record is fraudulent or otherwise improper and that this court should declare the financing statement or other record ineffective.

## IV.

The moving party attests that the assertions in this motion are true and correct.

## V.

The moving party does not request the court to make a finding as to any underlying claim of the parties involved ~~and acknowledges that this motion does not seek review of an effective financing statement.~~ The moving party further acknowledges that the moving party may be subject to sanctions if this motion is determined to be frivolous. The moving party may be contacted by the respondent at:

Mailing Address: (required)

Telephone Number:

Facsimile Number: (either facsimile or e-mail contact is required)

E-Mail Address: (either facsimile or e-mail contact is required)

## REQUEST FOR RELIEF

The moving party requests the court to review the attached documentation and enter an order finding that the financing statement or other record is ineffective together with other findings as the court deems appropriate.

Respectfully submitted, ..... (Signature and typed name and address).

Sec. 32. Minnesota Statutes 2008, section 545.05, subdivision 7, is amended to read:

Subd. 7. **Response form.** The person listed as [the secured party in] [filing] the record for which the moving party has requested review may respond to the motion and accompanying materials to request an actual hearing within 20 days from the mailing by certified United States mail by the moving party. The form for use by the person listed as [the secured party in] [filing] the record in question to respond to the motion for judicial review must be in substantially the following form:

In Re: A Purported Financing Statement in the district court of ..... County, Minnesota, Against [Name of person who filed the financing statement]

RESPONSE TO MOTION FOR JUDICIAL REVIEW OF A FINANCING STATEMENT FILED UNDER THE UNIFORM COMMERCIAL CODE - SECURED TRANSACTIONS

..... (name) files this response to a motion requesting a judicial determination of the effectiveness of a financing statement or other record filed under in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code - Secured Transactions in the office of the ..... (filing office and location) and in support of the motion provides as follows:

I.

..... (name), the respondent, is the person listed as [the secured party in] [filing] the record for which review has been requested by the moving party.

II.

On ..... (date), in the exercise of the filing officer's official duties as ..... (filing officer's position), the filing officer received and filed or recorded the financing statement or other record, a copy which is attached, that purports to [perfect a security interest or agricultural lien against] [amend or terminate a record filed by] [be for a purpose outside of the Uniform Commercial Code - Secured Transactions as to] the moving party.

III.

Respondent states that the financing statement or other record is not fraudulent or otherwise improper and that this court should not declare the financing statement or other record ineffective.

IV.

Respondent attests that assertions in this response are true and correct.

V.

Respondent does not request the court to make a finding as to any underlying claim of the parties involved. Respondent further acknowledges that respondent may be subject to sanctions if this response is determined to be frivolous.

REQUEST FOR RELIEF

Respondent requests the court to review the attached documentation, to set a hearing for no later than five days after the date of this response or as soon after that as the court shall order and to enter an order finding that the financing statement or other record is not ineffective together with other findings as the court deems appropriate. Respondent may be contacted at:

Mailing Address: (required)

Telephone Number:

Facsimile Number: (either facsimile or e-mail contact is required)

E-Mail Address: (either facsimile or e-mail contact is required)

Respectfully submitted, .....

(Signature and typed name and address).

Sec. 33. Minnesota Statutes 2008, section 545.05, subdivision 10, is amended to read:

Subd. 10. **Hearing.** (a) If a hearing is timely requested, the court shall hold that hearing within five days after the mailing of the response by the respondent or as soon after that as ordered by the court. After the hearing, the court shall enter appropriate findings of fact and conclusions of law regarding the financing statement or other record filed ~~under~~ in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code.

(b) If a hearing request under subdivision 7 is not received by the court by the 20th day following the mailing of the original motion, the court's finding may be made solely on a review of the documentation attached to the motion and without hearing any testimonial evidence. After that review, which must be conducted no later than five days after the 20-day period has expired, the court shall enter appropriate findings of fact and conclusions of law as provided in subdivision 11 regarding the financing statement or other record filed ~~under~~ in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code.

(c) A copy of the findings of fact and conclusions of law must be sent to the moving party, the respondent, and the person who filed the financing statement or other record at the address listed in the motion or response of each person within seven days of the date that the findings of fact and conclusions of law are issued by the court.

(d) In all cases, the moving party shall file or record an attested copy of the findings of fact and conclusions of law in the filing office in the appropriate class of records in which the original financing statement or other record was filed or recorded. The filing officer shall not collect a filing fee for filing a court's finding of fact and conclusion of law as provided in this section except as specifically directed by the court in its findings and conclusions.

Sec. 34. Minnesota Statutes 2008, section 545.05, subdivision 11, is amended to read:

Subd. 11. **Order form; no hearing.** The findings of fact and conclusion of law for an expedited review where no hearing has been requested must be in substantially the following form:

MISCELLANEOUS DOCKET No. ....

In Re: A Purported Financing Statement or Other Record in the district court of ..... County, Minnesota, Against [Name of person who filed financing statement]

Judicial Finding of Fact and Conclusion of Law Regarding a Financing Statement or Other Record Filed ~~Under~~ in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code - Secured Transactions

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name) and the documentation attached. The respondent did not respond within the required 20-day period. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation as provided in Minnesota Statutes, section 545.05.

The court finds as follows (only an item or subitem checked and initialed is a valid court ruling):

[..] The documentation attached to the motion IS filed or recorded with the authorization of the obligor, person named as debtor, or owner of collateral described or indicated in the financing statement or other record, or by consent of an agent, fiduciary, or other representative of that person, or with the authorization of the secured party of record in the case of an amendment or termination, and IS a legally valid financing statement or other record under the Uniform Commercial Code - Secured Transactions law of this state.

[..] The documentation attached to the motion IS NOT filed or recorded with the authorization of the obligor, person named as debtor, or owner of collateral described or indicated in the documentation, or by consent of an agent, fiduciary, or other representative of that person, or with the authorization of the secured party of record in the case of an amendment or termination and, IS NOT ~~an effective~~ a legally valid financing statement or other record under the Uniform Commercial Code - Secured Transactions law of this state.

[..] The documentation attached to the motion IS filed to perfect an agricultural lien or for a purpose outside of the Uniform Commercial Code - Secured Transactions and there IS statutory or other legal authority therefor.

[..] The documentation attached to the motion purports to perfect an agricultural lien or for a purpose outside of the Uniform Commercial Code - Secured Transactions, and there IS NOT statutory or other legal authority therefor.

[..] This court makes no finding as to any underlying claims of the parties involved and expressly limits its findings of fact and conclusions of law to the review of a ministerial act. The filing officer shall remove the subject financing statement or other record so that the record is not reflected in or obtained as a result of any search, standard or otherwise, conducted of those records, but shall retain them and these findings of fact and conclusions of law in the filing office for the duration of the period for which they would have otherwise been filed.

SIGNED ON THIS THE ..... DAY of .....

..... District Judge

..... District

..... County, Minnesota

Sec. 35. Minnesota Statutes 2008, section 545.05, subdivision 13, is amended to read:

Subd. 13. **Subsequent motion.** If the moving party files a subsequent motion under this section against a person filing a financing statement or other record that is reviewed under this section and found to be ~~filed or recorded with the authorization of the obligor, person named as debtor, or owner of collateral described or indicated in the financing statement or other record, or by consent of an agent, fiduciary, or other representative of that person, or with the authorization of the secured party of record in the case of an amendment or termination~~ legally valid under the Uniform Commercial Code - Secured Transactions law of this state or under other statutory or legal authority, the court may, in addition to assessing costs, order other equitable relief against the moving party or enter other sanctions against the moving party.

Sec. 36. **REPEALER.**

(a) Minnesota Statutes 2008, sections 5.03; and 308B.121, subdivision 3, are repealed.

(b) Minnesota Rules, part 8280.0470, is repealed.

Sec. 37. **EFFECTIVE DATE.**

Sections 22 to 36 are effective the day after final enactment.

Presented to the governor May 13, 2009

Signed by the governor May 16, 2009, 8:19 p.m.