

CHAPTER 317

NONPROFIT CORPORATIONS

The Nonprofit Corporation Code was prepared by a committee of the Minnesota bar association. Donald A. Holmes was chairman of the committee. A group of law students at the University of Minnesota, supervised by Professor Robert C. McClure, over a period of two years made the original research and classification. Their extensive report contained the basic draft of the bill. For a further period of two years the committee studied the bill before it was submitted to the legislature. The act became law on April 20, 1951. The plan and classification follow the pattern of the Minnesota Business Corporation Act. Existing corporations are bound by the first 25 sections (organization and internal provisions) unless within 15 months after the passage of the Act they reject it. Existing corporations are absolutely bound by the provisions of sections 317.26 to 317.77. The activities of nonprofit corporations are encouraged because they render a type of public service which otherwise would have to be performed by the state.

317.01 Unnecessary.**317.02 DEFINITIONS**

HISTORY. 1951 c 550 s 2; 1953 c 650 s 1.

NOTE: The distinction between "domestic corporation" and a corporation is necessary because sections 317.02 to 317.25 are elective, while sections 317.26 to 317.63 are not. "Foreign corporation" is defined restrictively as to purpose. "Notice" incorporates its statutory definition. In nonprofit corporations the directors are frequently designated by some other name. "Directors" is defined functionally so as to embrace all such persons. The term "bylaws" is also defined functionally. The word "member" is defined very broadly. It allows a corporation to become a member of another association.

When the trust res is clearly earmarked for purely charitable use, it is immaterial whether the designated trustee of the trust is a charitable corporation or a private corporation, since if the corporation becomes incapable of administering a trust the court can supply a successor. A court of equity will not permit a trust to fail for want of a trustee, and if an attempt is ever made to deviate from purely charitable purpose, the public interest will be protected by the attorney general who has the right and duty to enforce a charitable trust by proper court proceedings. In re Quinlan's Estate, 233 M 35, 45 NW(2d) 807.

All instruments pertaining to charitable trusts are to be construed literally in behalf of such trusts; and under a will devising real estate to a corporate foundation to be devoted to furtherance of its general objects and purposes with unrestricted power in the board of trustees to dispose of the property devised for the promotion of religious, educational, scientific, medical, surgical, social or charitable activities within the purpose of the corporation, the gift was in trust for charitable purposes. In re Quinlan's Estate, 233 M 35, 45 NW(2d) 807.

Where a trustee of the Duluth firemen's relief association, organized under Minnesota Statutes, Chapter 69, sustained injuries and disability as the result of an accident which took place while he was returning from a special meeting which he had been instructed by the association to attend, such injuries were as a result of an accident arising out of and in the course of his employment, and hence were covered by the Workmen's Compensation Act; and where by agreement he was to receive \$10 per day out of which he was paid his board and lodging, that sum is construed to be his daily wage as a basis for computing compensation. Cosgriff v Duluth Firemen's Relief Assn., 233 M 233, 45 NW(2d) 250.

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The corporate duration of the Minnesota state forestry association, a nonprofit corporation, organized prior to 1905, is perpetual unless limited by its articles. OAG Nov. 19, 1953 (92-A-9).

Nonprofit corporations organized under Laws 1951, Chapter 550, are not required to pay filing fees to the state treasurer. OAG Aug. 10, 1951 (92-A-30).

If it does not operate as a capital association the Minnesota dairy industry committee may elect to come under and be bound by the Nonprofit Corporation Act, even though it was organized under the capital marketing law. OAG March 12, 1952 (92-A-30).

A nonprofit domestic corporation which is organized under sections 317.02 to 317.69 is not required to pay a filing fee to the state treasurer even though the corporation is organized with capital stock. OAG Aug. 10, 1951 (92-A-30).

The Minnesota Nonprofit Corporation Act does not authorize a co-operative association to amend its articles so as to come under the Act. OAG Jan. 5, 1953 (93-A-25).

317.03 FOREIGN NONPROFIT CORPORATIONS, SECTIONS APPLICABLE

HISTORY. 1951 c 550 s 3; 1953 c 650 s 2.

317.04 APPLICATION TO DOMESTIC CORPORATIONS

HISTORY. 1951 c 550 s 4; 1953 c 650 s 3, 4.

NOTE: The elective features follow for the most part the plan indicated by section 301.60, subdivision 2, but in the nonprofit corporation a distinction must be drawn between corporations whose members have voting rights and those corporations in which the members do not have voting rights.

As to whether or not a hospital is subject to personal property and real estate taxes, reference is made to the following cases: Village of Hibbing v Commissioner of Taxation, 217 M 528, 14 NW(2d) 923; Fairmont Community Hospital Association, Inc. v State, 221 M 107, 21 NW(2d) 243; State v Academy of Our Lady of Lourdes, 221 M 227, 21 NW(2d) 617. OAG Sept. 24, 1953 (414-D-10).

317.05 PURPOSES OF INCORPORATION

HISTORY. 1951 c 550 s 5.

NOTE: The words "lawful purpose" must be limited by the word "nonprofit." The purposes listed in the Act are not exclusive.

A hospital, private or charitable, is liable to a patient for the torts of its employees under the doctrine of respondeat superior. Moeller v Hauser, 237 M 368, 54 NW(2d) 639.

If it does not operate as a co-operative association the Minnesota dairy industry committee may elect to come under and be bound by the Nonprofit Corporation Act even though it was organized under the Co-operative Marketing Law. OAG March 12, 1952 (92-A-30).

City teachers' retirement fund association, organized under the provisions of sections 135.19 to 135.27, may amend articles of incorporation so as to provide for survivorship benefits. Minnesota Nonprofit Corporation Act is applicable to such associations. OAG Sept. 15, 1953 (175-I).

317.06 SCOPE OF CHAPTER

HISTORY. 1951 c 550 s 6; 1953 c 650 s 5.

NOTE: The Nonprofit Corporation Code does not embrace all nonprofit corporations. The following are governed by other statutory provisions: Co-operative asso-

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ciation, chapter 308; Cemetery associations, chapters 306, 307; Nonprofit medical service plan corporations, chapter 159; Nonprofit hospital service plan corporations, sections 309.10 to 309.17.

317.07 INCORPORATORS

HISTORY. 1951 c 550 s 7.

As it relates to 4-H clubs, and under the terms of the Nonprofit Corporation Act, minors may be members and may exercise voting powers and act as directors, but may not be incorporators or serve as president, secretary, or treasurer. OAG June 25, 1951 (102-E).

317.08 ARTICLES OF INCORPORATION

HISTORY. 1951 c 550 s 8; 1953 c 650 s 6.

NOTE: Pennsylvania is the only other state which authorizes nonprofit corporations to issue capital stock. The articles must state the personal liability of the members. The street address of the registered office need not be stated.

317.09 CORPORATE NAME

HISTORY. 1951 c 550 s 9.

Conflicting interests and equities must be weighed in determining the lines to be drawn in separating fair competition from unfair competition. A personal name, whether it be a surname or a given name, may become a trade name. In order for a subsequent user of a personal name to use such name in conjunction with a distinguishing legend as a trade name in a market in which another has acquired a prior right to use the same personal name with respect to related goods, the distinguishing legend must be sufficiently striking in appearance or effect to distinguish the subsequent user's name from that of the prior user when the names are seen apart from each other as they are normally used in the trade. *Howards Clothes v Howard Clothes Corp.*, 236 M 291, 52 NW(2d) 753.

317.10 FILING ARTICLES

HISTORY. 1951 c 550 s 10.

317.11 CERTAIN PAPERS FILED WITH REGISTER OF DEEDS

HISTORY. 1951 c 550 s 11.

NOTE: Other states require the corporation to file with the register of deeds. For uniformity and convenience Minnesota adopted the procedure found in the Business Corporation Act.

317.12 CERTIFICATE OF INCORPORATION

HISTORY. 1951 c 550 s 12.

In the absence of a charter or statutory restriction, it is presumed that a corporation may determine who and how persons may be admitted to membership. A corporate body acquires a status which carries with it an inherent and unqualified responsibility of seeing that its actions are always compatible with the public welfare. Although a corporate charter and bylaw provisions are ordinarily pleaded defensively, they must be pleaded affirmatively where they are incidental to a right asserted. *Viilainen v American Finnish Workers Society*, 236 M 412, 53 NW(2d) 112.

317.13 CERTIFICATES, ARTICLES, AMENDMENTS; RECORDING NOT CONSTRUCTIVE NOTICE

HISTORY. 1951 c 550 s 13.

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317.14 ORGANIZATION MEETINGS

HISTORY. 1951 c 550 s 14; 1953 c 650 s 7.

NOTE: Under this Act organization meetings of the directors and of members for the purpose of adopting bylaws, electing officers, and the like is mandatory.

317.15 BYLAWS

HISTORY. 1951 c 550 s 15; 1953 c 650 s 8, 9.

NOTE: Bylaws are adopted or amended as are the articles, but they need not be filed. The protection of the rights and privileges of members may be found either in the articles or in the bylaws.

317.16 CORPORATE CAPACITY, CORPORATE AUTHORITY; DISTINGUISHED

HISTORY. 1951 c 550 s 16.

NOTE: Note the distinction between "capacity" and "authority."

317.17 MAY TAKE, HOLD, AND INVEST TRUST PROPERTY

HISTORY. 1951 c 550 s 17.

317.18 LOANS TO OFFICERS, DIRECTORS; PROHIBITION

HISTORY. 1951 c 550 s 18.

317.19 REGISTERED OFFICE

HISTORY. 1951 c 550 s 19; 1953 c 650 s 10.

317.20 DIRECTORS

HISTORY. 1951 c 550 s 20; 1953 c 650 s 11-13.

NOTE: The limitation regarding ex officio directors is sui generis. The method of filling a vacancy or removing an officer or agent may be stated in the articles or in the bylaws.

317.21 OFFICERS

HISTORY. 1951 c 550 s 21.

As it relates to 4-H clubs, and under the terms of the Nonprofit Corporation Act, minors may be members and may exercise voting powers and act as directors, but may not be incorporators nor serve as president, secretary, or treasurer. OAG June 25, 1951 (102-E).

317.22 MEETINGS OF MEMBERS

HISTORY. 1951 c 550 s 22; 1953 c 650 s 14.

NOTE: In many of the organizations the voting control rests with widely scattered individuals who are not able to personally attend a membership meeting so it is advisable to permit voting by mail.

If a corporation does not adopt a resolution rejecting the provisions of Laws 1951, Chapter 550, Sections 1 to 25, at a meeting called pursuant to notice, even though the corporation does not adopt a resolution to accomplish certain sections, it will automatically come under the provisions of section 4, clause (2), within 15 months from the time chapter 550 takes effect. In such case the provision of the present articles of notification by publication would be automatically voided. OAG Aug. 23, 1951 (92-A-30).

A nonprofit corporation may provide for different types of voting rights either by its articles or its bylaws. OAG Aug. 23, 1952 (92-A-30).

317.23 QUORUMS

HISTORY. 1951 c 550 s 23; 1953 c 650 s 15.

317.24 WAIVER OF NOTICE

HISTORY. 1951 c 550 s 24.

317.25 MEMBERSHIP

HISTORY. 1951 c 550 s 25.

An organization regulation substituting a majority vote of the national convention for otherwise prescribed formal procedure for the discharge of a member in cases where the member resorts to the court, before attempting to settle a dispute within the hierarchy of the organization is not contrary to public policy or violative of the law. There must be a notice and hearing. A lack of notice and hearing is a lack of due process. *Peters v Minn. Dept. of Ladies of G. A. R., M.*, 58 NW(2d) 58.

317.26 VOLUNTARY TRANSFER OF CORPORATE ASSETS

HISTORY. 1951 c 550 s 26; 1953 c 650 s 16, 17.

317.27 AMENDMENT OF ARTICLES

HISTORY. 1951 c 550 s 27; 1953 c 650 s 18, 19.

317.28 BOOKS AND RECORDS; FINANCIAL STATEMENT

HISTORY. 1951 c 550 s 28; 1953 c 650 s 20.

317.29 INTERROGATORIES; POWERS OF VISITATION

HISTORY. 1951 c 550 s 29.

MERGER AND CONSOLIDATION

317.30 DEFINITIONS

HISTORY. 1951 c 550 s 30.

NOTE: This Act completely supersedes prior statutes dealing with merger and consolidation of nonprofit corporations and applies to all nonprofit corporations even though not organized under this Act. The merger and consolidation procedure follows closely the Minnesota Business Corporation Act.

317.31 AUTHORITY TO MERGE OR CONSOLIDATE

HISTORY. 1951 c 550 s 31.

NOTE: Two or more nonprofit corporations may be merged. The resulting corporation is deemed incorporated under the nonprofit corporation law.

317.32 PROVISIONS EXCLUSIVE

HISTORY. 1951 c 550 s 32.

NOTE: Section 317.32 supersedes prior laws relating to merger and consolidation.

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317.33 AGREEMENT, CONTENTS

HISTORY. 1951 c 550 s 33.

317.34 AGREEMENT, PROCEDURE FOR ADOPTION

HISTORY. 1951 c 550 s 34.

NOTE: Only a majority is required under the Nonprofit Corporation Code, while two-thirds is required under the Minnesota Business Corporation Act.

317.35 AGREEMENT, EXECUTION

HISTORY. 1951 c 550 s 35.

317.36 AGREEMENT, FILING, RECORDING; CERTIFICATE ISSUED

HISTORY. 1951 c 550 s 36.

317.37 WHEN EFFECTIVE

HISTORY. 1951 c 550 s 37.

317.38 CONSEQUENCES

HISTORY. 1951 c 550 s 38.

317.39 ARTICLES OF INCORPORATION, AMENDMENT BY AGREEMENT OF MERGER

HISTORY. 1951 c 550 s 39.

317.40 CONTINUANCE OF CORPORATE CAPACITY

HISTORY. 1951 c 550 s 40.

317.41 APPLICATION OF SECTIONS 317.30-317.43, EXCEPTION

HISTORY. 1951 c 550 s 41.

317.42 DOMESTIC CORPORATION WITH FOREIGN CORPORATION

HISTORY. 1951 c 550 s 42.

317.43 FOREIGN CORPORATIONS WITH REALTY IN STATE

HISTORY. 1951 c 550 s 43.

NOTE: This provision was taken from the California Nonprofit Corporation Code.

VOLUNTARY DISSOLUTION

317.44 DOMESTIC CORPORATIONS, AUTHORITY TO DISSOLVE; PROVISIONS EXCLUSIVE

HISTORY. 1951 c 550 s 44.

NOTE: Under clause 1 a domestic nonprofit corporation may be dissolved only under the provisions of the Nonprofit Corporation Code. Under clause 2, where there are no substantial assets to distribute, an easier method of dissolution is provided.

317.45 OUT OF COURT PROCEDURE

HISTORY. 1951 c 550 s 45.

NOTE: The procedure outlined in section 317.45 closely follows the procedure in the Business Corporation Act.

317.46 IN COURT PROCEDURE

HISTORY. 1951 c 550 s 46.

NOTE: A bare majority of the voting members may authorize the filing of a petition for dissolution. This varies from the procedure outlined in the Business Corporation Act.

The provisions of sections 301.49, 301.50, and 301.51 are inapplicable to a proceeding for the involuntary dissolution of a nonprofit, nonbusiness corporation, and the court properly dismissed a proceeding for the dissolution of such a corporation. Where the nature or status of a corporation is in question, the objects and purposes stated in its articles of incorporation are controlling. *Brantner v Red River Live-stock Assn.*, 235 M 267, 50 NW(2d) 287.

317.47 APPLICATION TO COURT, PETITION TO CORPORATION

HISTORY. 1951 c 550 s 47.

NOTE: The application must be signed and verified by at least two authorized corporate officials.

317.48 PETITION, CONTENTS

HISTORY. 1951 c 550 s 48.

NOTE: This section follows the Pennsylvania law.

317.49 PROCEEDINGS, COMMENCEMENT

HISTORY. 1951 c 550 s 49.

317.50 HEARING ON PETITION

HISTORY. 1951 c 550 s 50.

317.51 TEMPORARY RECEIVER

HISTORY. 1951 c 550 s 51.

317.52 ATTORNEY GENERAL MAY INTERVENE

HISTORY. 1951 c 550 s 52.

NOTE: This does not change the existing law, and varies from the procedure set out in the Minnesota Business Corporation Act.

317.53 PETITION, APPROVAL; ORDER FOR LIQUIDATION

HISTORY. 1951 c 550 s 53.

NOTE: This follows closely the Pennsylvania Act.

317.54 LIQUIDATING RECEIVER

HISTORY. 1951 c 550 s 54.

317.55 LIQUIDATING RECEIVER; POWERS, DUTIES

HISTORY. 1951 c 550 s 55.

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317.56 CLAIMS; PRESENTATION, FAILURE TO PRESENT

HISTORY. 1951 c 550 s 56.

317.57 CORPORATE PROPERTY AND ASSETS, MANNER OF DISTRIBUTION

HISTORY. 1951 c 550 s 57.

317.58 REVOCATION OF CHARTER OF SUBORDINATE BODY

HISTORY. 1951 c 550 s 58.

NOTE: Notwithstanding the provisions of section 317.57 this section permits the carrying out of any valid contractual provision.

317.59 ORDER DISSOLVING CORPORATION

HISTORY. 1951 c 550 s 59.

NOTE: This section follows closely the provisions of the Minnesota Business Corporation Act.

317.60 ORDER DISSOLVING CORPORATION, FILING

HISTORY. 1951 c 550 s 60.

NOTE: The order will be recorded by the secretary of state with the register of deeds in a similar manner as in section 317.11.

317.61 OMITTED ASSETS, TITLE IN RECEIVER

HISTORY. 1951 c 550 s 61.

ACTION TO TERMINATE CORPORATE EXISTENCE

317.62 CORPORATE EXISTENCE, ACTION TO TERMINATE

HISTORY. 1951 c 550 s 62.

NOTE: The attorney general must bring suit when he deems that the public interest requires that he do so.

317.63 VIOLATIONS OF SECTION 317.62 CERTIFIED TO ATTORNEY GENERAL

HISTORY. 1951 c 550 s 63.

SPECIAL PROVISIONS

317.64 CHAMBERS OF COMMERCE, BOARDS OF TRADE, EXCHANGES

HISTORY. 1951 c 550 s 64.

317.65 CORPORATIONS TO SECURE OR MAINTAIN HOMES FOR DEPENDENT CHILDREN

HISTORY. 1951 c 550 s 65.

317.66 CORPORATIONS FOR RELIGIOUS PURPOSES

HISTORY. 1951 c 550 s 66.

The "Supreme Being Clause". 36 MLR 70.

MISCELLANEOUS GENERAL PROVISIONS

317.67 FEES; FILING DOCUMENTS, ISSUING CERTIFICATES

HISTORY. 1951 c 550 s 67; 1953 c 650 s 26.

317.68 LAWS APPLICABLE; LAWS NOT APPLICABLE

HISTORY. 1951 c 550 s 68.

317.69 REPEALS, EXCEPTION

HISTORY. 1951 c 550 s 78.

PARTNERSHIPS

CHAPTER 322

LIMITED PARTNERSHIPS

NOTE: The original act relating to limited partnerships was Laws 1858, Chapter 69. As amended it became GS 1913, Chapter 57. Laws 1918, Chapter 498, is the Uniform Limited Partnership Act and is coded as sections 322.01 to 322.31. It repealed GS 1913, Chapter 57.

The Uniform Limited Partnership Act has been adopted by the following states: Alaska, Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, and Wisconsin.

322.02 FORMATION

HISTORY. 1858 c 69 s 1-6; PS 1858 c 124 s 1-6; GS 1866 c 30 s 1-6; GS 1878 c 30 s 1-6; GS 1894 s 2330-2335; RL 1905 s 2819-2822; GS 1913 s 6114-6117; 1919 c 498 s 2; GS 1923 s 7354; MS 1927 s 7354.

There must be a partnership in reality and not a mere pretense of one to entitle the partners to divide the income tax burden according to their interests as they appear on the face of the articles of partnership. In the instant case there was no partnership in reality insofar as the defendant's four younger children were concerned. *State v Hitchcock*, 228 M 335, 37 NW(2d) 378.

322.03 BUSINESS WHICH MAY BE CARRIED ON

HISTORY. 1858 c 69 s 1; PS 1858 c 124 s 1; GS 1866 c 30 s 1; GS 1878 c 30 s 1; GS 1894 s 2330; RL 1905 s 2819; GS 1913 c 6114; 1919 c 498 s 3; GS 1923 s 7355; MS 1927 s 7355.

322.04 CHARACTER OF LIMITED PARTNER'S CONTRIBUTION

HISTORY. 1858 c 69 s 2, 3; PS 1858 c 124 s 2, 3; GS 1866 c 30 s 2, 3; GS 1878 c 30 s 2, 3; GS 1894 s 2331, 2332; RL 1905 s 2820; GS 1913 s 6115; 1919 c 498 s 4; GS 1923 s 7356; MS 1927 s 7356.

322.05 NAME NOT TO CONTAIN SURNAME OF LIMITED PARTNER

HISTORY. 1858 c 69 s 8; PS 1858 c 124 s 8; GS 1866 c 30 s 8; GS 1878 c 30 s 8; GS 1894 s 2337; RL 1905 s 2828; GS 1913 s 6123; 1919 c 498 s 5; GS 1923 s 7357; MS 1927 s 7357.