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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

**EIGHTY-FIFTH  
SESSION**

**HOUSE FILE No. 3543**

February 28, 2008

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The bill was read for the first time and referred to the Committee on Commerce and Labor

March 18, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act  
1.2 relating to business organizations; providing for the return of documents  
1.3 submitted to the secretary of state; regulating foreign cooperatives; removing  
1.4 the request that the attorney general and the Department of Revenue be notified  
1.5 of the dissolution of foreign cooperatives and nonprofit corporations; allowing  
1.6 foreign limited liability partnerships to use alternative names under certain  
1.7 circumstances; eliminating contest of name filings; amending Minnesota Statutes  
1.8 2006, sections 47.12, subdivision 2; 60A.07, subdivision 1; 303.11; 303.17,  
1.9 subdivision 4; 308A.005, by adding a subdivision; 308B.211, subdivision 2;  
1.10 308B.221, subdivision 4; 317A.823, subdivision 2; 321.0108; 323A.1102;  
1.11 proposing coding for new law in Minnesota Statutes, chapters 5; 308A; 308B;  
1.12 repealing Minnesota Statutes 2006, sections 5.22; 302A.115, subdivision  
1.13 8; 303.05, subdivision 4; 308A.121, subdivision 3; 308B.151; 317A.115,  
1.14 subdivision 6; 322B.12, subdivision 6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.21 ~~(b) A person doing business in this state may contest the subsequent registration of a~~  
2.22 ~~name with the Office of the Secretary of State as provided in section 5.22.~~

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

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

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

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

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

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

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

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

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

3.12 ~~A person doing business in this state may contest the subsequent registration of a~~  
3.13 ~~name with the Office of the Secretary of State as provided in section 5.22.~~

3.14 Domestic insurance corporations established in this manner are organized under and  
3.15 governed by chapter 302A, except as otherwise provided in subdivision 1d and chapter  
3.16 66A.

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

3.18 **303.11 NOTICE OF NAME CHANGES, WHERE FILED.**

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

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

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

3.27 (1) issue a certificate of revocation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.8 (b) If the corporation has not filed the delinquent registration, the secretary of  
5.9 state must issue a certificate of involuntary dissolution, and the certificate must be filed  
5.10 in the Office of the Secretary of State. ~~The secretary of state must annually inform the~~  
5.11 ~~attorney general and the commissioner of revenue of the methods by which the names of~~  
5.12 ~~corporations dissolved under this section during the preceding year may be determined.~~  
5.13 The secretary of state must also make available in an electronic format the names of  
5.14 the dissolved corporations. A corporation dissolved in this manner is not entitled to the  
5.15 benefits of section 317A.781.

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

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

5.18 **321.0108 NAME.**

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

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

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

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

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

6.1 and limited liability company authorized or registered to do business in this state, whether  
6.2 profit or nonprofit, and each name the right to which is, at the time of formation, reserved  
6.3 as provided for in sections 302A.117, 322A.03, 322B.125, or 333.001 to 333.54, unless  
6.4 there is filed with the certificate of limited partnership one of the following:

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

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

6.13 (3) the applicant's affidavit that the corporation, limited partnership, or limited  
6.14 liability company with the name that is not distinguishable has been incorporated or on file  
6.15 in this state for at least three years prior to the affidavit, if it is a domestic corporation,  
6.16 limited partnership, or limited liability company, or has been authorized or registered to  
6.17 do business in this state for at least three years prior to the affidavit, if it is a foreign  
6.18 corporation, limited partnership, or limited liability company, or that the holder of a name  
6.19 filed or registered with the secretary of state under sections 333.001 to 333.54 filed or  
6.20 registered that name at least three years prior to the affidavit; that the corporation, limited  
6.21 partnership, or limited liability company or holder has not during the three-year period  
6.22 before the affidavit filed any document with the secretary of state; that the applicant has  
6.23 mailed written notice to the corporation, limited partnership, or limited liability company  
6.24 or the holder of a name filed or registered with the secretary of state under sections  
6.25 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the  
6.26 registered office of the corporation or limited liability company or in care of the agent of  
6.27 the limited partnership, or the address of the holder of a name filed or registered with the  
6.28 secretary of state under sections 333.001 to 333.54, shown in the records of the secretary  
6.29 of state, stating that the applicant intends to use a name that is not distinguishable and the  
6.30 notice has been returned to the applicant as undeliverable to the addressee corporation,  
6.31 limited partnership, limited liability company, or holder of a name filed or registered  
6.32 with the secretary of state under sections 333.001 to 333.54; that the applicant, after  
6.33 diligent inquiry, has been unable to find any telephone listing for the corporation, limited  
6.34 partnership, or limited liability company with the name that is not distinguishable in the  
6.35 county in which is located the registered office of the corporation, limited partnership, or  
6.36 limited liability company shown in the records of the secretary of state or has been unable

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

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

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

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

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

7.26 ~~(j) A person doing business in this state may contest the subsequent registration of a~~  
 7.27 ~~name with the Office of the Secretary of State as provided in section 5.22.~~

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

7.29 **323A.1102 STATEMENT OF FOREIGN QUALIFICATION.**

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

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

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

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

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

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

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

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

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

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

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

8.24 Sec. 14. **REPEALER.**

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