

CHAPTER 338—S.F.No. 2094

An act relating to nonprofit corporations; providing for succession of fiduciary capacity in mergers and consolidations; clarifying authority for separate entities to hold church employee benefit plans; amending Minnesota Statutes 1984, sections 317.38; and 317.66, subdivision 1, and by adding a subdivision.

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

Section 1. Minnesota Statutes 1984, section 317.38, is amended to read:

317.38 CONSEQUENCES.

The consequences of merger or consolidation are:

(1) The several constituent corporations become a single corporation which (a) in case of merger is a surviving corporation, or (b) in case of consolidation is a new corporation.

(2) Excepting the surviving corporation and subject to clause (3) and to section 317.40, the separate existence of each constituent corporation ceases.

(3) When the agreement of merger or consolidation expressly provides for the continuance of the corporate existence of a constituent corporation and expressly declares the purpose for the continuance, the corporate existence of such constituent corporation continues in the single corporation for the purpose declared in the agreement.

(4) The single corporation has all the rights, privileges, immunities, powers, and franchises, and is subject to all of the duties and liabilities, of a corporation formed under this chapter.

(5) The single corporation has all the rights, privileges, immunities, powers, and franchises, public and private, of each constituent corporation.

(6) All property, real, personal, or mixed, all debts, including debts arising from a subscription for membership, and all interests belonging to each constituent corporation are transferred to the single corporation without further act or deed.

(7) Interest in any real estate possessed by a constituent corporation does not revert to the grantor, or otherwise, nor is it in any way impaired by reason of the merger or consolidation; and the personal property of a constituent corporation does not escheat by reason of the merger or consolidation.

(8) Except where the will or other instrument provides otherwise, and subject to clause ~~(9)~~ (10), a devise, bequest, gift, or grant contained in any will or other instrument, in trust or otherwise, made before or after the merger or consolidation has become effective, to or for any of the constituent corporations, inures to the single corporation.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(9) (a) Except where the will, declaration of trust, or other instrument provides otherwise, the single corporation is, without further act or deed, the successor of the constituent corporations in any and all fiduciary capacities in which a constituent corporation was acting at the time of the merger or consolidation and is liable to all beneficiaries as fully as if the constituent corporation had continued its separate corporate existence.

(b) If a constituent corporation is nominated and appointed, or has been nominated and appointed, in any fiduciary capacity in any will, declaration of trust, or any other instrument, order, or judgment of any court before or after the merger or consolidation, then even if the will or other instrument, order, or judgment does not become operative or effective until after the merger or consolidation becomes effective, every such fiduciary capacity and all of the rights, powers, privileges, duties, discretions, and responsibilities so provided to devolve upon, vest in, or inure to the corporation so nominated or appointed, shall fully and in every respect devolve upon, vest in, inure to, and are to be exercised by, the single corporation, whether there be one or more successive mergers or consolidations.

(c) For purposes of this section, the term "fiduciary capacity" means the capacities of trustee, executor, administrator, personal representative, guardian of estates, conservator, receiver, escrow agent, agent for the investment of money, attorney-in-fact, or any other similar capacity.

(10) Except as provided in section 501.12, property, assets, or income derived therefrom, possessed or received by a constituent corporation, or subsequently received by the single corporation after the merger or consolidation, shall not be diverted from the uses and purposes for which such property, assets, or income have been received and held, or from the uses and purposes expressed or intended by the original donor.

~~(10)~~ (11) All debts, liabilities, and obligations of each constituent corporation become the debts, liabilities, and obligations of the single corporation, just as if such debts, liabilities, and obligations had been incurred or contracted by the single corporation.

~~(11)~~ (12) Any existing claims or pending action or proceeding by or against a constituent corporation may be prosecuted to judgment as though the merger or consolidation had not been effected, or the single corporation may be substituted for the constituent corporation.

~~(12)~~ (13) The liabilities of the members, officers, directors, or similar groups or persons, however denominated, of a constituent corporation are not affected by the merger or consolidation of any constituent corporation.

~~(13)~~ (14) The rights of creditors or any liens upon the property of a constituent corporation are not impaired by the merger or consolidation, but the liens are limited to the property upon which they were liens immediately prior to the merger or consolidation.

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Sec. 2. Minnesota Statutes 1984, section 317.66, subdivision 1, is amended to read:

Subdivision 1. **BENEFITS FOR MEMBERS.** When duly authorized by its members or otherwise, a corporation formed for a religious purpose, may provide directly or through a church benefits board for:

(1) support and payment of benefits to its ministers, teachers, employees, or functionaries and to the ministers, teachers, employees, or functionaries of a nonprofit body affiliated with it or under its jurisdiction;

(2) payment of benefits to the widows, children, dependents, or other beneficiaries of the persons named in clause (1);

(3) collection of contributions and other payments; and,

(4) creation, maintenance, investment, management, and disbursement of necessary endowment, reserve, and other funds for these purposes, including any trust fund or corporation which funds a "church plan" as defined in section 414(e) of the Internal Revenue Code of 1954, as amended through December 31, 1985.

Sec. 3. Minnesota Statutes 1984, section 317.66, is amended by adding a subdivision to read:

Subd. 5. CHURCH BENEFITS BOARD. A "church benefits board" is an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1954, as amended through December 31, 1985, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if the organization is controlled by or associated with a church or a convention or association of churches.

Sec. 4. **EFFECTIVE DATE.**

Sections 1 to 3 are effective the day after final enactment.

Approved March 19, 1986

CHAPTER 339—H.F.No. 671

An act relating to financial institutions; authorizing interstate acquisition and formation of banks between this state and certain states on a reciprocal basis; amending Minnesota Statutes 1984, sections 46.044; and 48.512; proposing coding for new law in Minnesota Statutes, chapters 48 and 51A.

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