

**CHAPTER 58—S.F.No. 1042**

*An act relating to limited liability organizations; modifying name requirements; eliminating a filing requirement; clarifying when debts arise or accrue for limited liability partnerships; amending Minnesota Statutes 1994, sections 319A.02, subdivision 7; 319A.07; 319A.08; 322A.02; 322A.72; 322B.12, subdivision 1; 323.14, by adding a subdivision; 323.44, by adding a subdivision; and 323.45, subdivision 1.*

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

Section 1. Minnesota Statutes 1994, section 319A.02, subdivision 7, is amended to read:

Subd. 7. "Corporation" as used in this chapter includes a limited liability company organized under chapter 322B and a limited liability partnership. With respect to a limited liability company, references in this chapter to articles of incorporation, bylaws, directors, officers, shareholders and shares of stock shall refer to articles of organization, operating agreement, governors, managers, members and membership interests, respectively. With respect to a limited liability partnership and except as otherwise provided in section 319A.08, references in this chapter to articles of incorporation and bylaws refer to partnership agreement; references to directors, officers, and shareholders refer to partners; and references to shares of stock refer to partnership interests.

Sec. 2. Minnesota Statutes 1994, section 319A.07, is amended to read:

**319A.07 CORPORATE NAME.**

The corporate name of any corporation organized under sections 319A.01 to 319A.22 shall not be used to imply superiority and, in the case of a corporation, other than a limited liability company, shall end with the word "Chartered," or the word "Limited," or the abbreviation "Ltd.," or the words "Professional Association," or the abbreviation "P.A." The name of any limited liability company organized under sections 319A.01 to 319A.22 and chapter 322B shall end with the words "Professional Limited Liability Company," or the abbreviation "P.L.C.," or the words "Limited Liability Company," or the abbreviation "LLC." The name of any limited liability partnership organized under sections 319A.01 to 319A.22 and chapter 323 ~~must~~ shall end with the words "Professional Limited Liability Partnership," or the abbreviation "P.L.L.P.," or the words "Limited Liability Partnership," or the abbreviation "LLP."

Sec. 3. Minnesota Statutes 1994, section 319A.08, is amended to read:

**319A.08 PROFESSIONAL REGULATION.**

No professional corporation or foreign professional corporation shall begin to render professional service in the state of Minnesota until it has filed with each board having jurisdiction of professional service of a type which the corporation is authorized to render a copy of its articles of incorporation, except that

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a limited liability company shall instead file a copy of its articles of organization and a limited liability partnership shall instead file a copy of its registration with the secretary of state pursuant to section 323.44. Except as provided in this section, nothing in sections 319A.01 to 319A.22 shall restrict or limit in any manner the authority or duty of a board with respect to persons rendering professional service within the jurisdiction of the board, even if the person is a shareholder, director, officer, employee or agent of a professional corporation or foreign professional corporation and renders professional service through such corporation.

Sec. 4. Minnesota Statutes 1994, section 322A.02, is amended to read:

322A.02 NAME.

(a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain ~~without abbreviation~~ the words "limited partnership" or the abbreviation "LP";

(2) may not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) must be distinguishable from the name of a domestic corporation or limited partnership, whether profit or nonprofit, or 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, or a name the right to which is reserved or provided for in the manner provided for in sections 302A.117, 322A.03, 322B.125, or 333.001 to 333.54, unless there is filed with the certificate a written consent, court decree of prior right, or affidavit of nonuse, of the kind required by section 302A.115, subdivision 1, paragraph (d); and

(4) may not contain the following words: corporation, incorporated.

The secretary of state shall determine whether a name is "distinguishable" from another name for purposes of this section and section 322A.03. This section does 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, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or principles of equity.

(b) A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 5.22.

Sec. 5. Minnesota Statutes 1994, section 322A.72, is amended to read:

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**322A.72 NAME.**

(a) A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in its state of organization) that includes ~~without abbreviation~~ the words "limited partnership" or the abbreviation "LP" and that could be registered by a domestic limited partnership.

(b) A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 5.22.

Sec. 6. Minnesota Statutes 1994, 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 section 319A.03, ~~must contain the words "professional limited liability company," or the abbreviation "PLC"~~ meet the requirements of section 319A.07 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 a domestic limited liability company, corporation, or limited partnership, whether profit or nonprofit, or a foreign limited liability company, corporation, or limited partnership authorized or registered to do business in this state, whether profit or nonprofit, or a name the right to which is, at the time of organization, reserved or provided for in sections 302A.117, 317A.117, 322A.03, 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, corporation, or limited partnership or foreign limited liability company, 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

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(iii) the applicant's affidavit that the limited liability company, corporation, or 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, and has not during the three-year period filed any document with the secretary of state; that the applicant has mailed written notice to the limited liability company, corporation, or 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 limited liability company or corporation 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, 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 limited liability company, corporation, or 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 limited liability company, corporation, or limited partnership with the name that is not distinguishable in the county in which is located the registered office of the limited liability company or corporation 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 limited liability company, corporation, or 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.

Sec. 7. Minnesota Statutes 1994, section 323.14, is amended by adding a subdivision to read:

Subd. 6. WHEN DEBTS AND OBLIGATIONS ARISE AND ACCRUE. For the purposes of this section and section 323.16:

(a) All partnership debts and obligations under or relating to a note, contract, or other agreement arise and accrue when the note, contract, or other agreement is entered into.

(b) An amendment, modification, extension, or renewal of a note, contract, or other agreement does not affect the time at which a partnership debt or obligation under or relating to that note, contract, or other agreement arises and accrues, even as to a claim that relates to the subject matter of the amendment, modification, extension, or renewal.

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This subdivision does not affect any law, rule, or period pertaining to any statute of limitations or statute of repose.

Sec. 8. Minnesota Statutes 1994, section 323.44, is amended by adding a subdivision to read:

Subd. 8. LEGAL STATUS. For purposes of holding title to or conveying an interest in real or personal property and for all other purposes except as otherwise provided in this chapter, a partnership formed under this chapter remains the same entity:

(1) whether the partnership obtains the status of a limited liability partnership under subdivision 1, paragraph (a);

(2) whether the status of the partnership as a limited liability partnership terminates by reason of expiration of registration under subdivision 1, paragraph (b), or by reason of voluntary withdrawal of status under subdivision 6;

(3) during dissolution of the partnership; and

(4) regardless of whether the words "a limited liability partnership," "a professional limited liability partnership," "a general partnership," or the designation "L.L.P.," "LLP," "P.L.L.P.," or "PLL" are used in an instrument conveying an interest in real or personal property to or from the partnership or in any other writing.

Sec. 9. Minnesota Statutes 1994, section 323.45, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS; PROHIBITIONS.** The name of a limited liability partnership must meet all of the requirements of section 302A.115, subdivision 1, except that the acceptable words required by section 302A.115, subdivision 2, are "limited liability partnership" "Limited Liability Partnership" or the abbreviation "L.L.P." "LLP."

Sec. 10. **EFFECTIVE DATE; APPLICATION.**

Section 7 is effective the day following final enactment and applies retroactively to all notes, contracts, other agreements, amendments, modifications, extensions, and renewals entered into before, on, or after the effective date.

Presented to the governor April 17, 1995

Signed by the governor April 19, 1995, 2:14 p.m.

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