

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1498
(Representatives Tieman, Dosch, Ekstrom, Froseth)
(Senators Espegard, Heitkamp)
(Approved by the Delayed Bills Committee)

AN ACT to create and enact sections 45-11-02.1, 45-11-10, 47-25-02.1, and 47-25-08 of the North Dakota Century Code, relating to electronic filing of partnership fictitious name certificates and electronic filing of trade name registrations with the secretary of state; and to amend and reenact sections 45-11-04.1, 45-11-08.1, 47-25-03, 47-25-04, and 47-25-06 of the North Dakota Century Code, relating to fictitious name certificates and trade name registrations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 45-11-02.1 of the North Dakota Century Code is created and enacted as follows:

45-11-02.1. Electronic filing of fictitious name certificate. A partnership may file a fictitious name certificate by electronic communication with the secretary of state. The following definitions apply to electronic fictitious name certificate filings with the secretary of state:

1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
2. "Electronic communication" means any form of communication acceptable to the secretary of state, not directly involving the physical transmission of paper:
 - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
3. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
4. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
5. "Legal recognition" means a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. If a provision of this chapter requires:
 - a. A record to be in writing, an electronic record satisfies the requirement.
 - b. A signature, an electronic signature satisfies the requirement.
6. "Signed" means that the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document, and is communicated by a method or medium of communication acceptable to the secretary of state.

SECTION 2. AMENDMENT. Section 45-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

45-11-04.1. Renewal. A fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing. The statement of renewal must be executed by the partnership on forms prescribed and furnished by the secretary of state which are sent to the address of the principal place of business at least ~~sixty~~ ninety days before the deadline for filing. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, a brief description of the nature of business in which the partnership is engaged in this state, the names and addresses of all general partners, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the statement to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If the statement of renewal reflects a change of membership ~~or change of address of the principal place of business~~, the statement of renewal may not be filed until payment of the fees required for these changes are paid as required by section 45-11-05.1 ~~or 45-11-08.1~~. If a partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of the cancellation must be mailed to the address of the principal place of business.

SECTION 3. AMENDMENT. Section 45-11-08.1 of the North Dakota Century Code is amended and reenacted as follows:

45-11-08.1. Principal place of business. Each partnership which files a fictitious name certificate shall have and continuously maintain on file in the office of the secretary of state, an address of the principal place of business, which must also serve as a mailing address. The address of the principal place of business may be changed by ~~submitting a statement executed by the partnership with a filing fee of ten dollars~~ notifying the secretary of state. The ~~statement~~ notification must contain the name of the partnership, the state or country of organization, and the new address of the principal place of business.

SECTION 4. Section 45-11-10 of the North Dakota Century Code is created and enacted as follows:

45-11-10. Secretary of state - Exempt records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is an exempt record as defined by subsection 5 of section 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any social security number or federal tax identification number the secretary of state determines to be a closed record before a copy of any document is released to the public.

SECTION 5. Section 47-25-02.1 of the North Dakota Century Code is created and enacted as follows:

47-25-02.1. Electronic filing of trade name registration. A person or organization may file a trade name registration by electronic communication with the secretary of state. The following definitions apply to electronic trade name filings with the secretary of state:

1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
2. "Electronic communication" means any form of communication acceptable to the secretary of state, not directly involving the physical transmission of paper:
 - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.

3. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
4. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
5. "Legal recognition" means a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. If a provision of this chapter requires:
 - a. A record to be in writing, an electronic record satisfies the requirement.
 - b. A signature, an electronic signature satisfies the requirement.
6. "Signed" means that the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document, and is communicated by a method or medium of communication acceptable to the secretary of state.

SECTION 6. AMENDMENT. Section 47-25-03 of the North Dakota Century Code is amended and reenacted as follows:

47-25-03. Trade name - Nature. A trade name registered may not be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company name, domestic or foreign limited partnership name, domestic or foreign limited liability partnership name, domestic or foreign limited liability limited partnership name, or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if a franchise, a written consent from the franchiser. A trade name may not contain the word "company", "corporation", "incorporated", "limited", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of any of these words unless the owner of the trade name is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership as indicated by the words used in the name.

SECTION 7. AMENDMENT. Section 47-25-04 of the North Dakota Century Code is amended and reenacted as follows:

47-25-04. Trade names - Registration - Fees - Renewal - Notice. For the registration of a trade name under this chapter, the registrant shall pay to the secretary of state a fee of twenty-five dollars for an original registration, a fee of twenty-five dollars for an assignment, and a fee of ten dollars for a consent to use of a similar name or any other change in the original registration under this chapter. A registration remains in force for a period of five years from the date of the original registration and may be renewed within ~~thirty~~ ninety days before its expiration date by reregistering in the same manner as an original registration. The secretary of state shall notify the registrant by mail at least ninety days before the expiration of the registration.

The secretary of state may destroy all registrations or renewals one year after expiration.

SECTION 8. AMENDMENT. Section 47-25-06 of the North Dakota Century Code is amended and reenacted as follows:

47-25-06. Assignment. If the interest of any person engaged in business under a trade name changes or ceases to exist, or any other person becomes interested therein, the assignment of ownership must be registered within ninety days after any change takes place. Any trade name and its registration is assignable with the goodwill of the business in which the trade name is used. Assignment must be made by the assignor on forms ~~provided~~ prescribed by the secretary of state

setting forth the trade name, the names and addresses of each assignee, and the nature of the business. The assignment must be filed by the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal.

SECTION 9. Section 47-25-08 of the North Dakota Century Code is created and enacted as follows:

47-25-08. Secretary of state - Exempt records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is an exempt record as defined by subsection 5 of section 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any social security number or federal tax identification number the secretary of state determines to be a closed record before a copy of any document is released to the public.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1498.

House Vote: Yeas 93 Nays 0 Absent 1

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State