

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1320

Introduced by

Representatives Froseth, Schmidt, Warner

Senator Tomac

1 A BILL for an Act to create and enact a new subsection to section 10-15-05, sections
2 10-15-08.1, 10-15-08.2, and a new subsection to section 10-15-12.1 of the North Dakota
3 Century Code, relating to the articles of association of a cooperative and cooperative names;
4 and to amend and reenact sections 10-15-07, 10-15-36, and 10-15-54 of the North Dakota
5 Century Code, relating to cooperative existence, annual reports, and fees.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new subsection to section 10-15-05 of the North Dakota Century Code
8 is created and enacted as follows:

9 The effective date of the cooperative if a later date than that on which the
10 certificate of association is issued by the secretary of state. A later effective date
11 may not be later than ninety days after the date on which the certificate of
12 association is issued.

13 **SECTION 2. AMENDMENT.** Section 10-15-07 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **10-15-07. Filing articles of association - Cooperative existence.** An original of the
16 articles of association, duly signed and acknowledged, must be delivered to the secretary of
17 state for filing. The legal corporate existence of a cooperative begins when the ~~original articles~~
18 ~~are so delivered~~ certificate of association is issued by the secretary of state or on a later date
19 as specified in the articles of association. The secretary of state shall stamp on the articles of
20 association the date of filing and provide to the cooperative a certificate of the filing.

21 **SECTION 3.** Section 10-15-08.1 of the North Dakota Century Code is created and
22 enacted as follows:

23 **10-15-08.1. Cooperative name.**

24 1. The cooperative name:

- 1 a. Must be expressed in English letters or characters.
- 2 b. May contain the word "corporation" or "incorporated" or an abbreviation of
- 3 either of those words.
- 4 c. May not contain a word or phrase that indicates or implies that it is organized
- 5 for a purpose other than one or more business purposes for which a
- 6 cooperative association may be organized under this chapter.
- 7 d. May not be the same as, or deceptively similar to, the name of a domestic or
- 8 foreign corporation, limited liability company, limited liability partnership, or
- 9 limited partnership, whether profit or nonprofit, authorized to do business in
- 10 this state, or a name the right to which is, at the time of organization, in some
- 11 manner reserved, or is a fictitious name registered with the secretary of state
- 12 as provided in chapter 45-11, or is a trade name registered with the secretary
- 13 of state as provided in chapter 47-25, unless there is filed with the articles:
- 14 (1) A written consent to use the name obtained from the domestic or
- 15 foreign corporation, limited liability company, limited liability partnership,
- 16 or limited partnership authorized to do business in this state having a
- 17 deceptively similar name, or the holder of a reserved name, registered
- 18 trade name or fictitious name; or
- 19 (2) A certified copy of a judgment of a court in this state establishing the
- 20 prior right of the applicant to the use of the name in this state.
- 21 2. The secretary of state shall determine whether a cooperative name is deceptively
- 22 similar to another name for purposes of this chapter.
- 23 3. This section and section 10-15-08.2 do not:
- 24 a. Abrogate or limit:
- 25 (1) The law of unfair competition or unfair practices;
- 26 (2) Chapter 47-25;
- 27 (3) The laws of the United States with respect to the right to acquire and
- 28 protect copyrights, trade names, trademarks, service names, service
- 29 marks; or
- 30 (4) Any other rights to the exclusive use of names or symbols; or
- 31 b. Derogate the common law or the principles of equity.

- 1 4. A cooperative that is involuntarily dissolved by the secretary of state under section
2 10-15-36 may reacquire the right to use that name by reinstating the cooperative
3 within the time provided in section 10-15-36 or by refiling articles of association,
4 unless the name has been adopted for use or reserved by another person, in
5 which case the filing must be rejected unless the filing is accompanied by a written
6 consent or judgment as provided in subdivision d of subsection 1. A cooperative
7 that is unable to reacquire the use of its name shall adopt a new name that
8 complies with this section.

9 **SECTION 4.** Section 10-15-08.2 of the North Dakota Century Code is created and
10 enacted as follows:

11 **10-15-08.2. Reserved name.**

- 12 1. The exclusive right to the use of a name otherwise permitted by section 10-15-08.1
13 may be reserved by any person.
- 14 2. The reservation must be made by filing with the secretary of state a request that
15 the name be reserved, together with the fees provided in section 10-15-54. If the
16 name is available for use by the applicant, the secretary of state shall reserve the
17 name for the exclusive use of the applicant for a period of twelve months. The
18 reservation may be renewed for successive twelve-month periods.
- 19 3. The right to the exclusive use of a cooperative name reserved under this section
20 may be transferred to another person by or on behalf of the applicant for whom the
21 name was reserved by filing with the secretary of state a notice of the transfer and
22 specifying the name and address of the transferee, together with the fees provided
23 in section 10-15-54.
- 24 4. The right to the exclusive use of a cooperative name reserved under this section
25 may be canceled by or on behalf of the applicant for whom the name was reserved
26 by filing with the secretary of state a notice of the cancellation, with the fees
27 provided in section 10-15-54.
- 28 5. The secretary of state may accept for filing a legible facsimile copy of the signed
29 original of any request for a reserved name which is the same size as the original
30 document and which meets all other requirements of this section.

6. The secretary of state may destroy all reserved name requests and the reserved name requests index one year after expiration.

SECTION 5. A new subsection to section 10-15-12.1 of the North Dakota Century Code is created and enacted as follows:

The fee prescribed in section 10-15-54 for change of registered office may be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

SECTION 6. AMENDMENT. Section 10-15-36 of the North Dakota Century Code is amended and reenacted as follows:

10-15-36. Annual reports - Filing thereof - Fees - Penalties.

1. A cooperative and a foreign cooperative shall file an annual report signed by a principal officer or the general manager setting forth:
 - a. Its name and complete address of its principal place of business.
 - b. The names and addresses of its directors and principal officers.
 - c. A statement, by class and par value, of the amount of stock which it has authority to issue, and the amount issued.
 - d. A statement as to the general type of business engaged in during the prior year.
2. Such annual report must be made on forms prescribed by the secretary of state, and the information therein contained must be given as of the date of the execution of the report.
3. The annual report must be ~~delivered to~~ filed with the secretary of state ~~between January first and~~ on or before March thirty-first of each year following incorporation. A fee of twenty dollars must be paid to the secretary of state for filing the report. If the report does not conform to requirements, it must be returned to the cooperative for necessary corrections. The penalties for failure to file such report do not apply if it is corrected and returned within thirty days after the annual report was returned by the secretary of state. The secretary of state may extend the filing date for the annual report of any cooperative if a written application for an extension is received on or before March thirty-first.

- 1 4. Any report filed after March thirty-first may be filed only upon payment to the
2 secretary of state of the following fees:
- 3 a. If filed prior to May first, twenty-five dollars.
4 b. If filed thereafter but not later than the following March thirty-first, thirty-five
5 dollars.
- 6 5. If the report is not filed before May first, the secretary of state shall notify any
7 cooperative or foreign cooperative failing to file its annual report that the
8 cooperative is not in good standing and that it may be dissolved or its authority
9 may be revoked. If the cooperative or foreign cooperative files its annual report
10 after the notice with a fee of ~~twenty-five~~ thirty-five dollars, the secretary of state will
11 restore the certificate of incorporation or authority to good standing. Until restored
12 to good standing, the secretary of state may not accept for filing any document
13 respecting such cooperative except those incident to its dissolution or withdrawal.
14 If the annual report of a cooperative is not filed on or before March thirty-first of the
15 year following the year a cooperative is found to be not in good standing, the
16 cooperative ceases to exist and is considered involuntarily dissolved by operation
17 of law. The secretary of state shall note the dissolution of the cooperative on the
18 records of the secretary of state and shall give notice of the action to the dissolved
19 cooperative. Notice by the secretary of state must be mailed to the last reported
20 address of the principal place of business.
- 21 If the annual report of a foreign cooperative is not filed on or before March
22 thirty-first of the year following the year it is found to be not in good standing, the
23 foreign cooperative forfeits its authority to transact business in North Dakota. The
24 secretary of state shall note the revocation on the records of the secretary of state
25 and shall give notice of the action to the revoked foreign cooperative. Notice by
26 the secretary of state must be mailed to the last reported address of the principal
27 place of business. The secretary of state's determination that a certificate of
28 authority must be revoked under this section is final.
- 29 6. A cooperative which was dissolved for failure to file an annual report, or a foreign
30 cooperative whose authority was forfeited for failure to file an annual report, may
31 be reinstated by filing the past due annual report and paying fifty dollars. The fees

must be paid and the report filed within one year following the date of the involuntary dissolution or revocation. Reinstatement under this section does not affect the rights or liability of any person for the time from the dissolution or revocation to the reinstatement.

7. Proof to the satisfaction of the secretary of state that on or before any of the filing dates prescribed by this section, the report was postmarked by the United States postal service or other carrier service, in a sealed, properly addressed, postage prepaid envelope must be deemed to comply with this requirement. When a filing date falls on a Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.

8. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

SECTION 7. AMENDMENT. Section 10-15-54 of the North Dakota Century Code is amended and reenacted as follows:

10-15-54. Fees. No document may be filed or recorded nor any certificate issued until all fees therefor have been paid. Any fee or penalty due under this chapter may be recovered in a suit brought by the attorney general in the name of the state. The secretary of state shall charge and collect from any association for:

1. Filing articles of association and issuing a certificate of association, thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, twenty dollars.
3. Filing restated articles of association, thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
5. Filing articles or decree of dissolution, twenty dollars.
6. Receiving service of any process, notice, or demand, twenty-five dollars.
7. Filing an application of a foreign cooperative for a certificate of authority to do business in this state and issuing a certificate therefor, forty dollars.
8. For filing a name reservation, a transfer of name reservation, a cancellation of name reservation, or a consent to use of name, ten dollars.

- 1 9. Filing any other document or statement, or issuing any other certificate, twenty
2 dollars.