

HOUSE BILL NO. 1498

Introduced by

Representatives Tieman, Dosch, Ekstrom, Froseth

Senators Espegard, Heitkamp

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to create and enact sections 45-11-02.1, 45-11-10, 47-25-02.1, and 47-25-08
2 of the North Dakota Century Code, relating to electronic filing of partnership fictitious name
3 certificates and electronic filing of trade name registrations with the secretary of state; and to
4 amend and reenact sections 45-11-04.1, 45-11-08.1, 47-25-03, 47-25-04, and 47-25-06 of the
5 North Dakota Century Code, relating to fictitious name certificates and trade name registrations.

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

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

9 **45-11-02.1. Electronic filing of fictitious name certificate.** A partnership may file a
10 fictitious name certificate by electronic communication with the secretary of state. The following
11 definitions apply to electronic fictitious name certificate filings with the secretary of state:

12 1. "Electronic" means relating to technology having electrical, digital, magnetic,
13 wireless, optical, electromagnetic, or similar capabilities.

14 2. "Electronic communication" means any form of communication acceptable to the
15 secretary of state, not directly involving the physical transmission of paper:

16 a. That creates a record that may be retained, retrieved, and reviewed by a
17 recipient of the communication; and

18 b. That may be directly reproduced in paper form by the recipient through an
19 automated process.

20 3. "Electronic record" means a record created, generated, sent, communicated,
21 received, or stored by electronic means.

22 4. "Electronic signature" means an electronic sound, symbol, or process attached to
23 or logically associated with a record and executed or adopted by a person with the
24 intent to sign the record.

1 5. "Legal recognition" means a record or signature may not be denied legal effect or
2 enforceability solely because it is in electronic form. If a provision of this chapter
3 requires:

4 a. A record to be in writing, an electronic record satisfies the requirement.

5 b. A signature, an electronic signature satisfies the requirement.

6 6. "Signed" means that the signature of a person, which may be a facsimile affixed,
7 engraved, printed, placed, stamped with indelible ink, transmitted by facsimile
8 telecommunication or electronically, or in any other manner reproduced on the
9 document, and is communicated by a method or medium of communication
10 acceptable to the secretary of state.

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

13 **45-11-04.1. Renewal.** A fictitious name certificate filed under this chapter must be
14 renewed every five years from the date of the initial filing. The statement of renewal must be
15 executed by the partnership on forms prescribed ~~and furnished~~ by the secretary of state which
16 are sent to the address of the principal place of business at least ~~sixty~~ ninety days before the
17 deadline for filing. The statement must include the fictitious name of the partnership, the state
18 or country of organization, the address of the principal place of business, a brief description of
19 the nature of business in which the partnership is engaged in this state, the names and
20 addresses of all general partners, and a statement that the partnership is still in existence and
21 continues to transact business in this state. If the secretary of state finds that the statement
22 conforms to the requirements of this section, and the filing fee of twenty-five dollars has been
23 paid, the secretary of state shall file the statement. If the secretary of state finds that it does not
24 so conform, the secretary of state shall promptly return the statement to the partnership for any
25 necessary corrections, in which event, the fictitious name certificate is subject to cancellation if
26 the statement is not returned corrected within thirty days after the statement was returned for
27 corrections. If the statement of renewal reflects a change of membership ~~or change of address~~
28 ~~of the principal place of business~~, the statement of renewal may not be filed until payment of
29 the fees required for these changes are paid as required by section 45-11-05.1 ~~or 45-11-08.1.~~
30 If a partnership fails to file the statement of renewal when due, the fictitious name certificate

1 must be canceled by the secretary of state and notice of the cancellation must be mailed to the
2 address of the principal place of business.

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

5 **45-11-08.1. Principal place of business.** Each partnership which files a fictitious
6 name certificate shall have and continuously maintain on file in the office of the secretary of
7 state, an address of the principal place of business, which must also serve as a mailing
8 address. The address of the principal place of business may be changed by ~~submitting a~~
9 ~~statement executed by the partnership with a filing fee of ten dollars~~ notifying the secretary of
10 state. The ~~statement~~ notification must contain the name of the partnership, the state or country
11 of organization, and the new address of the principal place of business.

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

14 **45-11-10. Secretary of state - Exempt records.** Any social security number or
15 federal tax identification number disclosed or contained in any document filed with the secretary
16 of state under this chapter is an exempt record as defined by subsection 5 of section
17 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any
18 social security number or federal tax identification number the secretary of state determines to
19 be a closed record before a copy of any document is released to the public.

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

22 **47-25-02.1. Electronic filing of trade name registration.** A person or organization
23 may file a trade name registration by electronic communication with the secretary of state. The
24 following definitions apply to electronic trade name filings with the secretary of state:

- 25 1. "Electronic" means relating to technology having electrical, digital, magnetic,
26 wireless, optical, electromagnetic, or similar capabilities.
- 27 2. "Electronic communication" means any form of communication acceptable to the
28 secretary of state, not directly involving the physical transmission of paper:
- 29 a. That creates a record that may be retained, retrieved, and reviewed by a
30 recipient of the communication; and

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

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

20 **47-25-03. Trade name - Nature.** A trade name registered may not be the same as or
21 deceptively similar to any other trade name, domestic or foreign corporation name, domestic or
22 foreign limited liability company name, domestic or foreign limited partnership name, domestic
23 or foreign limited liability partnership name, domestic or foreign limited liability limited
24 partnership name, or a name the right to which is in any manner reserved or registered in the
25 office of the secretary of state, unless there is filed with the trade name registration a written
26 consent of the holder of the similar name to use the proposed name, or if a franchise, a written
27 consent from the franchiser. A trade name may not contain the word "company", "corporation",
28 "incorporated", "limited", "limited liability company", "limited partnership", "limited liability
29 partnership", "limited liability limited partnership", or any abbreviation of any of these words
30 unless the owner of the trade name is a corporation, limited liability company, limited

1 partnership, limited liability partnership, or limited liability limited partnership as indicated by the
2 words used in the name.

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

5 **47-25-04. Trade names - Registration - Fees - Renewal - Notice.** For the registration
6 of a trade name under this chapter, the registrant shall pay to the secretary of state a fee of
7 twenty-five dollars for an original registration, a fee of twenty-five dollars for an assignment, and
8 a fee of ten dollars for a consent to use of a similar name or any other change in the original
9 registration under this chapter. A registration remains in force for a period of five years from the
10 date of the original registration and may be renewed within ~~thirty~~ ninety days before its
11 expiration date by reregistering in the same manner as an original registration. The secretary of
12 state shall notify the registrant by mail at least ninety days before the expiration of the
13 registration.

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

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

18 **47-25-06. Assignment.** If the interest of any person engaged in business under a
19 trade name changes or ceases to exist, or any other person becomes interested therein, the
20 assignment of ownership must be registered within ninety days after any change takes place.
21 Any trade name and its registration is assignable with the goodwill of the business in which the
22 trade name is used. Assignment must be made by the assignor on forms ~~provided~~ prescribed
23 by the secretary of state setting forth the trade name, the names and addresses of each
24 assignee, and the nature of the business. The assignment must be filed by the secretary of
25 state who, upon recording of the assignment, shall issue in the name of the assignee a new
26 certificate for the remainder of the term of the registration or of the last renewal.

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

29 **47-25-08. Secretary of state - Exempt records.** Any social security number or
30 federal tax identification number disclosed or contained in any document filed with the secretary
31 of state under this chapter is an exempt record as defined by subsection 5 of section

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- 1 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any
- 2 social security number or federal tax identification number the secretary of state determines to
- 3 be a closed record before a copy of any document is released to the public.