

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1127
(Representatives Laning, B. Anderson, Tveit)
(Senator Anderson)

AN ACT to amend and reenact sections 10-15-08.1, 10-19.1-13, and 10-32.1-11, subsection 14 of section 10-32.1-92, section 10-33-10, subdivision I of subsection 1 of section 10-33-140, subsection 3 of section 10-34-04, subdivision I of subsection 1 of section 10-36-08, section 45-10.2-10, subsection 13 of section 45-10.2-109, sections 45-11-01, 45-13-04.1, 45-22-04, and 45-23-03, subsection 13 of section 45-23-08, and section 47-25-03 of the North Dakota Century Code, relating to the names of cooperatives, corporations, limited liability companies, domestic and foreign real estate investment trusts, limited partnerships, fictitious partnerships, and limited liability partnerships; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-15-08.1 of the North Dakota Century Code is amended and reenacted as follows:

10-15-08.1. Cooperative name.

1. The cooperative name:
 - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
 - b. May contain the word "corporation" or "incorporated" or an abbreviation of either of those words.
 - c. May not contain a word or phrase ~~that indicates~~indicating or ~~implies that~~implying it is organized for a purpose other than one or more business purposes for which a cooperative association may be organized under this chapter.
 - d. ~~May not be the same as, or deceptively similar to,~~Must be distinguishable in the records of the secretary of state from the name, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles of association of a domestic cooperative or the application for authority of a foreign cooperative, a record in compliance with subsection 2 of:
 - (1) Another cooperative association;
 - (2) A corporation;
 - (3) A limited liability company;
 - (4) A limited liability partnership;
 - (5) A limited partnership;
 - (6) A limited liability limited partnership;
 - (7) A name the right to which is, at the time of organization, in some manner reserved;
 - (8) A fictitious name registered with the secretary of state as provided in chapter 45-11;

- (9) A trade name registered with the secretary of state as provided in chapter 47-25; or
 - (10) A trademark or service mark registered in the manner provided in chapter 47-22.
2. If the secretary of state determines a cooperative name is ~~deceptively similar to~~ indistinguishable from another name for purposes of this chapter, then the cooperative name may not be used unless there is filed with the articles of association or application for authority:
 - a. A written consent to use the name obtained from the domestic or foreign corporation, limited liability company, limited liability partnership, limited liability limited partnership, or limited partnership authorized to do business in this state having a ~~deceptively similar~~ an indistinguishable name, or the holder of a reserved name, registered trade name, fictitious name, or trademark or service mark; or
 - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
 3. The secretary of state shall determine whether a cooperative name is ~~deceptively similar to~~ distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
 4. This section and section 10-15-08.2 do not:
 - a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
 - (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
 5. A cooperative that is involuntarily dissolved by the secretary of state under section 10-15-53.2 may reacquire the right to use that name by reinstating the cooperative within the time provided in section 10-15-53.3 or by refiling articles of association, unless the name has been adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment as provided in ~~subdivision d of subsection 42.~~ A cooperative that is unable to reacquire the use of its name shall adopt a new name that complies with this section.
 6. A cooperative that files its articles of association with an effective date later than the date of filing as provided in section 10-15-07 shall maintain the right to the name until the effective date.

SECTION 2. AMENDMENT. Section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-13. Corporate name.

1. The corporate name:
 - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.

- b. Must contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
 - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
 - d. May not contain a word or phrase ~~that indicates~~indicating or ~~implies~~implying the corporation:
 - (1) Is incorporated for a purpose other than:
 - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
 - (b) For a purpose stated in its articles of incorporation; or
 - (2) May not be incorporated under this chapter.
 - e. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
 - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record that complies with subsection 3, of:
 - (a) Another corporation;
 - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
 - (c) A limited liability company;
 - (d) A limited partnership;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited partnership;
 - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11;
 - (4) A trade name registered in the manner provided in chapter 47-25; or
 - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is ~~"deceptively similar" to~~distinguishable in the secretary of state's records from another name for purposes of this chapter ~~and may adopt rules reasonable or necessary for making these determinations.~~
3. If the secretary of state determines ~~that~~ a corporate name is ~~"deceptively similar" to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter, ~~then~~ the corporate name may not be used unless there is filed with the articles:
- a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar~~indistinguishable; or

- b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. This ~~subsection~~ section does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
5. This section and section 10-19.1-14 do not:
 - a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
 - (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
 - a. Was incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
 - e. Holds a trade name registered in the manner provided in chapter 47-25; or
 - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
8. A corporation whose period of existence has expired or ~~that~~ is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 or 10-19.1-146.1 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection ~~23~~. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:
 - a. By refiling articles of incorporation pursuant to section 10-19.1-11;
 - b. By amending pursuant to section 10-19.1-17; or

- c. By reinstating pursuant to section 10-19.1-146.
9. Subject to section 10-19.1-133, this section applies to ~~anya~~ foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, ~~but need not,~~ be submitted to and approved by the shareholders as provided in section 10-19.1-18.
11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-19.1-12 shall maintain the right to the name until the effective date.

SECTION 3. AMENDMENT. Section 10-32.1-11 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-11. Limited liability company name.

1. The limited liability company name:
 - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange table;
 - b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;
 - c. May not contain:
 - (1) The word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or ~~anyan~~ abbreviation of these words; or
 - (2) The words "limited" or "company" without association to the words "limited liability company" or the abbreviations of these words as provided in subsection b;
 - d. May not contain a word or phrase ~~that indicates~~indicating or ~~implies that~~implying the limited liability company:
 - (1) Is organized for a purpose other than:
 - (a) A lawful business purpose for which a limited liability company may be organized under this chapter; or
 - (b) For a purpose stated in its articles of organization; or
 - (2) May not be organized under this chapter; and
 - e. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
 - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record which complies with subsection 3, of:
 - (a) Another limited liability company;
 - (b) A corporation;

- (c) A limited partnership;
 - (d) A limited liability partnership; or
 - (e) A limited liability limited partnership;
- (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11;
 - (4) A trade name registered in the manner provided in chapter 47-25; or
 - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a limited liability company name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter ~~and may adopt rules reasonable or necessary for making these determinations.~~
3. If the secretary of state determines that a limited liability company name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter, ~~then~~ the limited liability company name may not be used unless there is filed with the articles:
- a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar to~~distinguishable; or
 - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. This section and section 10-32.1-12 do not:
- a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
 - (4) Any other rights to the exclusive use of names or symbols.
 - b. Derogate the common law or the principles of equity.
5. A domestic or foreign limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:
- a. Was organized, incorporated, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

- d. Holds a fictitious name registered in the manner provided in chapter 45-11;
 - e. Holds a trade name registered in the manner provided in chapter 47-25; or
 - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
6. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.
 7. A limited liability company whose period of existence has expired or that is involuntarily terminated by the secretary of state pursuant to section ~~10-32.1-89~~10-32.1-90 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32.1-20, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection ~~23~~. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section:
 - a. By refiling the articles of organization pursuant to section 10-32.1-20;
 - b. By amending pursuant to section 10-32.1-21; or
 - c. By reinstating pursuant to section 10-32.1-91.
 8. Subject to section 10-32.1-73, this section applies to ~~any~~ foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
 9. An amendment that only changes the name of the limited liability company may be authorized by a resolution approved by the board and may, ~~but need not~~, be submitted to and approved by the members as provided in subdivision b of subsection 1 of section 10-32.1-21.
 10. A limited liability company that files its articles of organization with an effective date later than the date of filing as provided in subdivision b of subsection 2 of section 10-32.1-20 shall maintain the right to the name until the effective date.

SECTION 4. AMENDMENT. Subsection 14 of section 10-32.1-92 of the North Dakota Century Code is amended and reenacted as follows:

14. Filing a consent to use ~~of a~~ name, ten dollars.

SECTION 5. AMENDMENT. Section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

10-33-10. Corporate name.

1. The corporate name:
 - a. Must be in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
 - b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.

- c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or ~~any~~ abbreviation of these words.
 - d. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that~~ implying the corporation:
 - (1) Is incorporated for a purpose other than:
 - (a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or
 - (b) For a purpose stated in its articles; or
 - (2) May not be incorporated under this chapter.
 - e. ~~May not be the same as or deceptively similar to~~ Must be distinguishable in the records of the secretary of state from:
 - (1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 23, of:
 - (a) Another corporation;
 - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
 - (c) A limited liability company;
 - (d) A limited partnership;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited partnership;
 - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11;
 - (4) A trade name registered in the manner provided in chapter 47-25; or
 - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is ~~"deceptively similar"~~ to distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
3. If the secretary of state determines that a corporate name is ~~"deceptively similar"~~ to distinguishable in the secretary of state's records from another name for purposes of this chapter, ~~then~~ the corporate name may not be used unless there is filed with the articles:
- a. The written consent of the holder of the rights to the name the proposed name is determined to be ~~deceptively similar to~~ indistinguishable; or
 - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
5. This section and section 10-33-11 do not:
 - a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, or service marks; or
 - (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
 - a. Was incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to conduct activities or transact business in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
 - e. Holds a trade name registered in the manner provided in chapter 47-25; or
 - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from conducting activities under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-33-139 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 23. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section:
 - a. By refiling articles of incorporation pursuant to section 10-33-08;
 - b. By amending pursuant to section 10-33-14; or
 - c. By reinstating pursuant to section 10-33-139.

9. Subject to section 10-33-126, this section applies to ~~anya~~ foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, ~~but need not,~~ be submitted to and approved by the members as provided in section 10-33-15.
11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-33-09 shall maintain the right to the name until the effective date.

SECTION 6. AMENDMENT. Subdivision I of subsection 1 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

- I. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

SECTION 7. AMENDMENT. Subsection 3 of section 10-34-04 of the North Dakota Century Code is amended and reenacted as follows:

3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
 - a. ~~The name of the real estate investment trust which may not be the same or deceptively similar to~~ must be distinguishable in the records of the secretary of state from the name of any other another real estate investment trust registered with the secretary of state, or ~~anya~~ corporation, limited liability company, limited partnership, limited liability partnership, limited liability limited partnership, or ~~anya~~ name that is in some manner reserved with the secretary of state, ~~that is a fictitious trade name registered as provided in chapter 45-11, or that is a trade name registered as provided in chapter 47-25, or is a trademark or service mark registered as provided in chapter 47-22,~~ unless ~~there is filed with the secretary of state a written consent of the holder of the similar indistinguishable~~ trade name to use the name proposed by the real estate investment trust is filed with the secretary of state. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or ~~anyan~~ abbreviation of these words. The secretary of state shall determine whether a name is distinguishable in the secretary of state's records and may adopt rules reasonable or necessary for making these determinations.
 - b. The state and date of its formation.
 - c. The name, address, and principal place of business of each trustee and officer.
 - d. The name of its registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
 - e. The address of the principal place of business.
 - f. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process as provided in section 10-01.1-13.

SECTION 8. AMENDMENT. Subdivision I of subsection 1 of section 10-36-08 of the North Dakota Century Code is amended and reenacted as follows:

- I. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

SECTION 9. AMENDMENT. Section 45-10.2-10 of the North Dakota Century Code is amended and reenacted as follows:

45-10.2-10. Limited partnership name.

1. The name of each limited partnership as set forth in the certificate of limited partnership:
 - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
 - b. Must contain without abbreviation the words "limited partnership" or the abbreviation "L.P." or "LP", either of which abbreviations may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.
 - c. May contain the name of ~~anya~~ partner.
 - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", "limited liability limited partnership", or ~~anyan~~ abbreviation of these words.
 - e. May not contain a word or phrase ~~that indicates~~indicating or ~~implies that~~implying the limited partnership:
 - (1) Is organized for a purpose other than:
 - (a) A lawful purpose for which a limited partnership may be organized under this chapter; or
 - (b) For a purpose stated in its certificate of limited partnership; or
 - (2) May not be organized under this chapter.
 - f. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
 - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate of limited partnership a record in compliance with subsection 3, of:
 - (a) Another limited partnership;
 - (b) A corporation;
 - (c) A limited liability company;
 - (d) A limited liability partnership; or
 - (e) A limited liability limited partnership;
 - (2) A name the right to which is, at the time of the filing of the certificate of limited partnership, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11;
 - (4) A trade name registered in the manner provided in chapter 47-25; or
 - (5) A trademark or service mark registered in the manner provided in chapter 47-22.

2. The secretary of state shall determine whether a limited partnership name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter ~~and may adopt rules reasonable or necessary for making these determinations.~~
3. If the secretary of state determines a limited partnership name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter, ~~then~~ the limited partnership name may not be used unless there is filed with the articles:
 - a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar to~~indistinguishable; or
 - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. Subsection 3 does not affect the right of a limited partnership existing on the effective date of this chapter, or a foreign limited partnership authorized to do business in this state on that date, to continue the use of its name.
5. This section and section 45-10.2-11 do not:
 - a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
 - (4) Any other right to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
6. A limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may include in its name, subject to the requirements of subsection 1, the name of any of the organizations, if the other organization whose name is sought to be used:
 - a. Was incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
 - e. Holds a trade name registered in the manner provided in chapter 47-25; or
 - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a limited partnership in violation of this section does not affect or vitiate its limited partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited partnership from doing business under a name assumed in violation of this section, although its certificate of limited partnership may have been filed with the secretary of state.

8. A limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state as provided in section 45-10.2-108 or 45-10.2-108.1 may reacquire the right to use that name by refiling a certificate of limited partnership pursuant to section 45-10.2-23 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A limited partnership that cannot reacquire the use of its limited partnership name shall adopt a new limited partnership name that complies with this section by refiling a certificate of limited partnership as provided in section 45-10.2-23; by amending its certificate of limited partnership as provided in section 45-10.2-24; or by reinstating the limited partnership pursuant to section 45-10.2-108. If the new limited partnership name has been adopted for use or reserved by another person, the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.
9. Subject to section 45-10.2-78, this section applies to ~~any~~ foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. A limited partnership ~~that files~~refiling its certificate of limited partnership with an effective date later than the date of filing as provided in subsection 3 of section 45-10.2-27 shall maintain the right to the name until the effective date.

SECTION 10. AMENDMENT. Subsection 13 of section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

13. Filing a consent to use a ~~deceptively similar~~ name, ten dollars.

SECTION 11. AMENDMENT. Section 45-11-01 of the North Dakota Century Code is amended and reenacted as follows:

45-11-01. Partnership - Use of fictitious name.

1. As used in this section, "fictitious name" means a name assumed to identify a partnership and which does not include in its name:
 - a. The true name of each organizational partner;
 - b. The first name and surname of each partner; or
 - c. The surname of each partner, repeating a surname if more than one partner has the same surname.
2. ~~Any~~A partnership transacting business in this state under a fictitious name or under a designation ~~that does not show~~showing the names of the persons interested as partners must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. When a partnership has more than two members, an additional three dollars must be paid for each additional member not to exceed two hundred fifty dollars. A limited partnership or a foreign limited partnership transacting business under a name filed under chapter 45-10.2 and as provided in section 45-11-03 or a partnership transacting business under a name filed under section 45-13-05 is not required to file a fictitious name certificate under this section.
3. The fictitious name:
 - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.

- b. May not contain the word "corporation", "company", "incorporated", "limited liability company", or "limited", or an abbreviation of any of those words. This subsection does not preclude the word "limited" from being used in conjunction with the word "partnership".
- c. ~~May not be the same as or deceptively similar to any~~Must be distinguishable in the records of the secretary of state from a name reserved or registered with the secretary of state unless there is filed with the fictitious name certificate a written consent from the holder of the similar indistinguishable name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
 - (1) ~~Any~~A corporate name;
 - (2) ~~Any~~A limited liability company name;
 - (3) ~~Any~~A trade name;
 - (4) Any other fictitious partnership name;
 - (5) ~~Any~~A limited partnership name;
 - (6) ~~Any~~A limited liability partnership name;
 - (7) ~~Any~~A limited liability limited partnership name; or
 - (8) ~~Any~~A trademark or service mark.

4. The secretary of state shall determine whether a fictitious partnership name is distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.

SECTION 12. AMENDMENT. Section 45-13-04.1 of the North Dakota Century Code is amended and reenacted as follows:

45-13-04.1. Partnership name.

- 1. A partnership name filed in a statement under section 45-13-05:
 - a. Must be in the English language or in any other language expressed in English letters or characters;
 - b. May contain the name of ~~anya~~ partner;
 - c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or ~~anyan~~ abbreviation of these words;
 - d. May not contain a word or phrase that indicates or implies that the partnership:
 - (1) Is organized for a purpose other than a lawful purpose for which a partnership may be organized under this chapter; or
 - (2) May not be formed under this chapter; and
 - e. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
 - (1) The name, whether foreign and authorized to do business in this state or domestic, unless filed with the statement is a record which complies with subsection 3 of:

- (a) Another partnership;
 - (b) A limited liability company;
 - (c) A corporation;
 - (d) A limited partnership;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited partnership;
 - (2) A name, the right of which is, at the time of filing, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25; or
 - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a partnership name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter ~~and may adopt rules reasonable or necessary for making these determinations.~~
 3. If the secretary of state determines a partnership name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter, ~~then~~ the partnership name may not be used unless there is filed with the statement:
 - a. The written consent of the holder of the rights to the name to which the proposed name is determined to be ~~deceptively similar~~indistinguishable; or
 - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
 4. This section does not affect the right of a partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name.
 5. This section and section 45-13-04.2 do not:
 - a. Abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or any other rights to the exclusive use of a name or symbol.
 - b. Derogate the common law or any principle of equity.
 6. A partnership that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations if the other organization whose name is sought to be used:
 - a. Is formed under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;

- c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-32.1-12, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.
7. The use of a name by a partnership in violation of this section does not affect or vitiate the partnership existence of the partnership. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.
8. If the period of existence of the partnership is expired or a statement of a partnership filed under section 45-13-05 is expired, then the partnership may reacquire the right to use that name by refiling a statement pursuant to section 45-13-05, unless the name was adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A partnership that cannot reacquire the use of its partnership name shall adopt a new partnership name that complies with this section.

SECTION 13. AMENDMENT. Section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

45-22-04. Limited liability partnership - Name.

1. The name of a limited liability partnership:
- a. Must be expressed in letters or characters in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
 - b. Must contain the words "limited liability partnership" or the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.
 - c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability limited partnership", or any abbreviation of these words.
 - d. May not contain a word or phrase ~~that indicates~~indicating or ~~that implies~~that implying the limited liability partnership:
 - (1) Is formed for a purpose other than:
 - (a) A lawful purpose for which a limited liability partnership may be formed under this chapter; or
 - (b) For a purpose stated in its registration; or
 - (2) May not be formed under this chapter.
 - e. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
 - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the registration a record that complies with subsection 3, of:

- (a) Another limited liability partnership;
 - (b) A corporation;
 - (c) A limited liability company;
 - (d) A limited partnership; or
 - (e) A limited liability limited partnership;
- (2) A name, the right to which is at the time of registration reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
- (3) A fictitious name registered in the manner provided in chapter 45-11;
- (4) A trade name registered in the manner provided in chapter 47-25; or
- (5) A trademark or service mark registered in the manner provided in chapter 47-22.
- f. Need not be filed as provided in chapter 45-11 except if transacting business under a name other than the name as registered under this chapter.
2. The secretary of state shall determine whether a name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
3. If the secretary of state determines ~~that a limited liability partnership name is deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter, the limited liability partnership name may not be used unless there is filed with the registration:
- a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar~~indistinguishable; or
 - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section and section 45-22-05 do not:
- a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
 - (4) Any other rights to the exclusive use of names or symbols.
 - b. Derogate the common law or principles of equity.
5. A limited liability partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought:
- a. Is incorporated, organized, formed, or registered under the laws of this state;

- b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
 - e. Holds a trade name registered in the manner provided in chapter 47-25; or
 - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate the limited liability partnership's status as a limited liability partnership. However, a court of this state may, upon application of the state or of an interested or affected person, enjoin the limited liability partnership from doing business under a name assumed in violation of this section, even though the limited liability partnership's registration may have been filed with the secretary of state.
7. A limited liability partnership whose registration has expired or whose registration has been forfeited as provided in section 45-22-21.1 may reacquire the right to use that name by refiling a registration as provided in section 45-22-03 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A limited liability partnership that cannot reacquire the use of its limited liability partnership name shall adopt a new limited liability partnership name that complies with this section:
- a. By refiling a registration as provided in section 45-22-03;
 - b. By amending its registration as provided in section 45-22-03; or
 - c. By reinstating the limited liability partnership pursuant to section 45-22-21.1, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.
8. With respect to foreign limited liability partnerships:
- a. A foreign limited liability partnership may register under any name that would be available to a domestic limited liability partnership, regardless of whether the name is the same under which the foreign limited liability partnership is authorized in the jurisdiction of original registration.
 - b. A fictitious name certificate must be filed as provided in chapter 45-11 only if registering under a name other than the name as authorized in the jurisdiction of original registration.
9. A limited liability partnership that files its registration with an effective date later than the date of filing as provided in subsection 9 of section 45-22-03 shall maintain the right to the name until the effective date.

SECTION 14. AMENDMENT. Section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

45-23-03. Limited liability limited partnership name.

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:

- a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
 - b. Must contain without abbreviation the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may be used interchangeably for any purpose authorized by this chapter including real estate matters, contracts, and filings with the secretary of state.
 - c. May contain the name of ~~anya~~ partner.
 - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", or ~~anyan~~ abbreviation of these words.
 - e. May not contain a word or phrase ~~that indicates~~indicating or ~~that implies~~that implying the limited liability limited partnership:
 - (1) Is organized for a purpose other than:
 - (a) A lawful purpose for which a limited liability limited partnership may be organized under this chapter; or
 - (b) For a purpose stated in its certificate of limited liability limited partnership; or
 - (2) May not be organized under this chapter.
 - f. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
 - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate a record in compliance with subsection 3, of:
 - (a) Another limited liability limited partnership;
 - (b) A limited partnership;
 - (c) A corporation;
 - (d) A limited liability company; or
 - (e) A limited liability partnership;
 - (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11;
 - (4) A trade name registered in the manner provided in chapter 47-25; or
 - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a limited liability limited partnership name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
 3. If the secretary of state determines a limited liability limited partnership name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes

of this chapter, the limited liability limited partnership name may not be used unless there is filed with the certificate:

- a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar~~indistinguishable; or
 - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section does not:
- a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
 - (4) Any other rights to the exclusive use of any name or symbol.
 - b. This section does not derogate the common law or the principles of equity.
5. A limited liability limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:
- a. Is incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
 - e. Holds a trade name registered in the manner provided in chapter 47-25; or
 - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
6. The use of a name of a limited liability limited partnership in violation of this section does not affect or vitiate a limited liability limited partnership's existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability limited partnership from doing business under a name assumed in violation of this section, although a certificate of limited liability limited partnership may have been filed with the secretary of state.
7. A limited liability limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108 or ~~45-10.2-108.1~~ may reacquire the right to use that name by refiling a certificate of limited liability limited partnership pursuant to section 45-23-04, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3. A limited liability limited partnership that cannot reacquire the use of its limited liability limited partnership name

shall adopt a new limited liability limited partnership name that complies with the provisions of this section:

- a. By refiling the certificate of limited liability limited partnership pursuant to section 45-23-04;
 - b. By amending pursuant to section 45-10.2-24; or
 - c. By reinstating pursuant to section 45-10.2-108, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3.
8. Subject to section 45-23-07, this section applies to ~~any~~ foreign limited liability limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
9. A limited liability limited partnership that files its certificate of limited liability limited partnership with an effective date later than the date of filing as provided in subsection 1 of section 45-23-05 shall maintain the right to the name until the effective date.

SECTION 15. AMENDMENT. Subsection 13 of section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

13. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

SECTION 16. AMENDMENT. Section 47-25-03 of the North Dakota Century Code is amended and reenacted as follows:

47-25-03. Trade name - Nature.

1. A trade name:
 - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
 - b. 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 those 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.
3. ~~May not be the same as or deceptively similar to any~~
 - c. Must be distinguishable in the records of the secretary of state from a name reserved or registered with the secretary of state unless there is filed with the registration a written consent from the holder of the similar indistinguishable name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
 - a. ~~Any~~
 - (1) A corporate name;
 - b. ~~Any~~
 - (2) A limited liability company name;
 - e. (3) Any other trade name;

d. Any

(4) A fictitious partnership name;

e. Any

(5) A limited partnership name;

f. Any

(6) A limited liability partnership name;

g. Any

(7) A limited liability limited partnership name; or

h. Any

(8) A trademark or service mark.

4. d. That is a franchise must be accompanied by a written consent from the franchiser.

2. The secretary of state shall determine whether a trade name is distinguishable in the secretary of state's records from another trade name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.

SECTION 17. CONTINGENT EFFECTIVE DATE. This Act becomes effective upon receipt by the legislative council of the certification by the secretary of state attesting that all necessary administrative rules and information technology components and systems are ready for implementation of this Act.

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 Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1127.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 42 Nays 0 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State