

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2116
(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

AN ACT to create and enact section 10-15-01.1, a new subsection to section 10-15-36, a new subsection to section 10-15-54, and section 10-15-62 of the North Dakota Century Code, relating to legal recognition of electronic records and electronic signatures, exempting some information from open records laws, and fees for filing documents with the secretary of state; and to amend and reenact section 10-15-01 and subsection 1 of section 10-15-29 of the North Dakota Century Code, relating to definitions and officers of cooperative associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-15-01 of the North Dakota Century Code is amended and reenacted as follows:

10-15-01. Definitions. As used in this chapter, unless the context requires otherwise, the term:

1. "Association" includes both cooperatives and foreign cooperatives.
2. "Cooperative" means an association incorporated under this chapter.
3. "Corporation" means all corporations not associations.
4. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
5. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
 - a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. May be directly reproduced in paper form by the recipient through an automated process.
6. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
7. "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.
8. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
 - a. That a document meeting the applicable requirements of this chapter together with the fees provided in section 10-15-54 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
 - b. That the secretary of state shall then:

- (1) Record the actual date on which the document is filed, and if different, the effective date of filing; and
- (2) Record the document in the office of the secretary of state.

9. "Foreign cooperative" means an association incorporated under a cooperative law of another state which has members residing within this state and which is operating on the following cooperative bases:

- a. Either no member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital the member owns therein, or the foreign cooperative does not pay dividends on stock or membership capital in excess of eight percent per annum.
- b. The foreign cooperative shall not deal in the products of or for nonmembers to an amount greater in value than such as are handled by it for members.
- c. The foreign cooperative distributes its proceeds according to either the law governing cooperatives of this state or the law of the state of its incorporation.

5. 10. "Member" means a person who has been qualified and accepted for membership in an association.

SECTION 2. Section 10-15-01.1 of the North Dakota Century Code is created and enacted as follows:

10-15-01.1. Legal recognition of electronic records and electronic signatures.

1. For purposes of this chapter:
 - a. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
 - b. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
 - c. If a provision requires a record to be in writing, then an electronic record satisfies the requirement; and
 - d. If a provision requires a signature, then an electronic signature satisfies the requirement.
2. The provisions of this chapter relating to electronic records or electronic transactions do not limit or supersede any provision of chapter 9-16.

SECTION 3. AMENDMENT. Subsection 1 of section 10-15-29 of the North Dakota Century Code is amended and reenacted as follows:

1. The principal officers of a cooperative are a president, one or more vice presidents and a treasurer as prescribed in the bylaws, and a secretary, ~~and a treasurer~~. They shall be elected annually by the board at such time and in such manner as the bylaws provide. Each principal officer except the secretary and the treasurer must be a director of the cooperative. The offices of secretary and treasurer may be combined in one person. If the bylaws provide, the board of directors may also elect from its number a chairman and one or more vice chairmen, in which case the president and vice presidents need not be directors or stockholders.

SECTION 4. A new subsection to section 10-15-36 of the North Dakota Century Code is created and enacted as follows:

Fees paid to the secretary of state according to subsections 4, 5, and 6 are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by subsection 1 or lacks sufficient payment as required by subsections 4, 5, and 6.

SECTION 5. A new subsection to section 10-15-54 of the North Dakota Century Code is created and enacted as follows:

Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.

SECTION 6. Section 10-15-62 of the North Dakota Century Code is created and enacted as follows:

10-15-62. Secretary of state - Confidential 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 confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2116.

Senate Vote: Yeas 44 Nays 0 Absent 3

House Vote: Yeas 94 Nays 0 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State