

## **CHAPTER 47-25 TRADE NAMES**

### **47-25-01. Trade name defined - Registration.**

1. a. As used in this section, a "trade name" is a name assumed to identify the business or activities of an individual or organization and which does not include in the name:
  - (1) The true name of the organization using the name;
  - (2) The first name and surname of each individual using the business name; or
  - (3) The surname of each individual, repeating a surname if more than one owner has the same surname.
- b. A name assumed under paragraph 3 or a name of an organization or association not otherwise registered with the secretary of state is a trade name if a license or permit to conduct business or operations is required by this state.
2. A person or organization that has registered a trade name under this section may institute a civil suit prohibiting any other person from using the name.
3. This chapter does not prohibit any person engaged in business under a trade name before July 1, 1959, from continuing business under that name.
4. Notwithstanding any other provision of law, an individual or organization may register as a trade name under section 47-25-04 any name listed in paragraph 1, 2, or 3 of subdivision a of subsection 1.

### **47-25-02. Trade name - Registration - Statement - Contents.**

A person or organization may not engage in business in this state under a trade name until the trade name is registered with the secretary of state. This section does not apply to partnerships that have filed a fictitious name certificate as provided under chapter 45-11. The trade name registration must be a statement executed by the owner upon forms prescribed by the secretary of state, setting forth:

1. The trade name to be registered;
2. The name and address of the owner of the business, and if a corporation, limited liability company, or other organization, the state or country of incorporation or organization;
3. Address of the principal place of business; and
4. The nature of the business in detail.

#### **47-25-02.1. Electronic filing of trade name registration.**

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

1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
2. "Electronic communication" means any form of communication acceptable to the secretary of state, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
3. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
4. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
5. "Legal recognition" means a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. If a provision of this chapter requires:

- a. A record to be in writing, an electronic record satisfies the requirement.
- b. A signature, an electronic signature satisfies the requirement.
6. "Signed" means that the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document, and is communicated by a method or medium of communication acceptable to the secretary of state.

**47-25-03. Trade name - Nature. (Contingent effective date - [See note](#))**

A trade name:

1. 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.
2. 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 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 name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
  - a. Any corporate name;
  - b. Any limited liability company name;
  - c. Any other trade name;
  - d. Any fictitious partnership name;
  - e. Any limited partnership name;
  - f. Any limited liability partnership name;
  - g. Any limited liability limited partnership name; or
  - h. Any trademark or service mark.
4. That is a franchise must be accompanied by a written consent from the franchiser.

**Trade name - Nature. (Contingent effective date - [See note](#))**

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 an 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.
  - 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 indistinguishable name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
    - (1) A corporate name;
    - (2) A limited liability company name;
    - (3) Any other trade name;
    - (4) A fictitious partnership name;
    - (5) A limited partnership name;
    - (6) A limited liability partnership name;
    - (7) A limited liability limited partnership name; or
    - (8) A trademark or service mark.

- 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.

**47-25-03.1. Certain use of trade names by franchisees restricted.**

1. Except as provided in section 47-25-03, an individual or organization that is a franchisee may not register a licensed trade name under this chapter. If the licensed trade name is not registered as provided in this chapter, the franchisee may not use the trade name in this state until the franchisee has provided the following disclosure information to the secretary of state on a form prescribed by the secretary of state for that purpose:
  - a. The true and full name and business address of the franchisee;
  - b. The complete trade name licensed to the franchisee;
  - c. The address of each place of business in this state where the franchisee will use or display the unregistered trade name;
  - d. The name and address of the franchiser or other licensor of the trade name; and
  - e. Any other information that the secretary of state may reasonably request to identify or contact the franchisee.

The disclosure filing required under this subsection is subject to the same filing fee and renewal requirements as provided in section 47-25-04 for trade name registrations.

2. A trade name licensed to a franchisee that is not registered under the provisions of this chapter is not entitled to any trade name protection provided by this chapter.

**47-25-04. Trade names - Registration - Fees - Renewal - Notice.**

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

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

**47-25-05. Certificate of registration.**

Every certificate of the registration of a trade name, within thirty days from the time of the registration of such trade name, must be indexed in the office of the secretary of state and a copy of the certificate must be given to the registrant.

**47-25-06. Assignment.**

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

#### **47-25-06.1. Change of name or address of registrant - Other amendments.**

Any registrant that effects a name change must record that name change with the secretary of state. The secretary of state must record the name change upon the payment of a fee of twenty-five dollars and filing of the following:

1. A notarized statement reciting the name change if the registrant is an individual;
2. A certificate of fact reciting the name change duly authenticated by the proper officer of the state or country if the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership incorporated or organized in another state or country and does not have a certificate of authority to transact business in North Dakota; or
3. An amendment or application for amended certificate of authority for a registrant that is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership registered with the secretary of state.

The secretary of state shall issue a certificate in the new name of the registrant for the remainder of the term of the registration or of the last renewal thereof.

A registrant must notify the secretary of state in writing when effecting a change of address. A corporate annual report filed by the secretary of state that reflects a change of address of the principal place of business of a registrant may serve as such notice.

A registrant may submit an amendment to a trade name registration on a form prescribed by the secretary of state to show any change in the nature of the business or in the purpose of the registration. The secretary of state shall amend the registration upon receipt of the completed form and payment of a fee of twenty-five dollars by the registrant.

#### **47-25-07. Cancellation.**

The secretary of state shall cancel from the register:

1. Any registration concerning which the secretary of state receives a voluntary request for cancellation from the registrant or the assignee of record on forms prescribed by the secretary of state. In the case of a registrant who is a deceased individual, the request for cancellation may be made by the personal representative of the registrant's estate.
2. Any registration concerning which a state district court finds any of the following:
  - a. That the registered trade name has been abandoned.
  - b. That the registrant is not the owner of the trade name.
  - c. That the registration was granted improperly.
  - d. That the registration was obtained fraudulently.
  - e. That the trade name registered is so similar to a trade name registered by another person as to be likely to cause confusion or mistake or to deceive.
3. Any registration a district court orders canceled on any grounds.
4. Any trade name when the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.

#### **47-25-08. Secretary of state - Exempt records.**

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