

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative White offered the following:

3
4 **Amendment**

5 Remove everything after the enacting clause and insert:
6 Section 1. Section 865.09, Florida Statutes, is amended to
7 read:

8 865.09 Fictitious name registration.—

9 (1) SHORT TITLE.—This section may be cited as the
10 "Fictitious Name Act."

11 (2) DEFINITIONS.—As used in this section, the term:

12 (a) (b) "Business" means any enterprise or venture in which
13 a person sells, buys, exchanges, barter, deals, or represents
14 the dealing in any thing or article of value, or renders
15 services for compensation.

Amendment No. 1

16 (b) (c) "Division" means the Division of Corporations of
17 the Department of State.

18 (c) (a) "Fictitious name" means any name under which a
19 person transacts business in this state, other than the person's
20 legal name.

21 (d) "Registrant" means a person who registers a fictitious
22 name with the division.

23 (3) REGISTRATION.—

24 (a) A person may not engage in business under a fictitious
25 name unless the person first registers the name with the
26 division by filing a registration sworn statement listing:

27 1. (a) The name to be registered.

28 2. (b) The mailing address of the business.

29 3. (c) The name and address of each registrant owner and,
30 if a corporation, its federal employer's identification number
31 and Florida incorporation or registration number.

32 4. If the registrant is a business entity that was
33 required to file incorporation or similar documents with its
34 state of organization when it was organized, such entity must be
35 registered with the division and in active status with the
36 division; provide its Florida document registration number; and
37 provide its federal employer identification number if the entity
38 has such a number.

39 5. (d) Certification by at least one registrant the
40 applicant that the intention to register such fictitious name

Amendment No. 1

41 has been advertised at least once in a newspaper as defined in
42 chapter 50 in the county in which where the principal place of
43 business of the registrant is or applicant will be located.

44 6.(e) Any other information the division may reasonably
45 deem necessary to adequately inform other governmental agencies
46 and the public as to the registrant persons so conducting
47 business.

48 (b) Such registration statement shall be accompanied by
49 the applicable processing fees and any other taxes or penalties
50 owed to the state.

51 (c) With respect to a general partnership that is not
52 registered with the division, its partners are the registrants
53 and not the partnership entity. With respect to a general
54 partnership that is registered with the division, the
55 partnership is the registrant and it must be in active status
56 with the division at the time the registration is filed.

57 (4) CANCELLATION AND REREGISTRATION CHANGE OF OWNERSHIP.-
58 If the ownership of a business registered under this section
59 changes, the owner of record with the division a registrant
60 ceases to engage in business under a registered fictitious name,
61 such registrant shall file a cancellation with the division and
62 reregistration that meets the requirements set forth in
63 subsection (3) within 30 days after the cessation occurs the
64 occurrence of such change. If such cessation is in connection
65 With a transfer of the business or, with respect to a general

399901 - h0169-strike 2.docx

Published On: 3/8/2017 6:46:45 PM

Amendment No. 1

66 partnership that is not registered with the division, in
67 connection with a transfer by a general partner of all or any
68 part of the general partner's partnership interest and, as a
69 result, a new person will engage in business under the
70 registered fictitious name, such new person may reregister the
71 name pursuant to subsection (3) at the same time as the
72 cancellation is filed.

73 (5) TERM. -

74 (a) A fictitious name registered under this section
75 shall be valid for a period beginning on the date of
76 registration or reregistration and expiring on December 31 of
77 the 5th calendar year thereafter, counting the period from
78 registration or reregistration through December 31 of the year
79 of registration or reregistration as the first calendar year.

80 (b) Each renewal under subsection (6) is valid for a
81 period of 5 years beginning on January 1 of the year following
82 the prior registration expiration date and expiring of 5 years
83 and expires on December 31 of the 5th calendar year.

84 (6) RENEWAL.-

85 (a) Renewal of a fictitious name registration shall
86 occur on or after January 1 and on or before December 31 of the
87 expiration year. Upon timely filing of a renewal statement, the
88 effectiveness of the name registration is continued for 5 years
89 as provided in subsection (5).

Amendment No. 1

90 (b) In the last year that a of the registration is to
91 expire, the division shall notify the owner or registrant of the
92 fictitious name registration of the upcoming expiration of the
93 fictitious name no later than September 1. If the owner or
94 registrant of the fictitious name has provided the division
95 department with an electronic mail address, such notice shall be
96 by electronic transmission. If the business is a general
97 partnership that is not registered with the division and thus
98 there is more than one registrant for the fictitious name, the
99 division need only notify one of the registrants.

100 (c) If a registrant the owner of the fictitious name
101 registration fails to timely file a renewal and pay the
102 appropriate processing fees on or before December 31 of the year
103 of expiration, the fictitious name registration expires. The
104 division shall remove any expired or canceled fictitious name
105 registration from its records and may purge such registrations.
106 Failure to receive the notice statement of expiration renewal
107 required by paragraph (b) shall not constitute grounds for
108 appeal of a registration's expiration or removal from the
109 division's records.

110 (d) If a registered fictitious name is prohibited by
111 subsection (14) at the time of renewal, the fictitious name may
112 not be renewed.

113 (7) EXEMPTIONS.—A business formed by an attorney
114 actively licensed to practice law in this state, by a person

Amendment No. 1

115 actively licensed by the Department of Business and Professional
116 Regulation or the Department of Health for the purpose of
117 practicing his or her licensed profession, or by any
118 corporation, limited liability company, partnership, or other
119 business commercial entity that is actively organized or
120 registered and in active status with the division Department of
121 State is not required to register its name pursuant to this
122 section, unless the name under which business is to be conducted
123 differs from the name as licensed or registered.

124 (8) EFFECT OF REGISTRATION.—Notwithstanding the
125 provisions of any other law, registration under this section is
126 for public notice only, and does not give gives rise to a no
127 presumption of the registrant's rights to own or use the name
128 registered, nor does it affect trademark, service mark, trade
129 name, or corporate or other business entity name rights
130 previously acquired by others in the same or a similar name.
131 Registration under this section does not reserve a fictitious
132 name against future use.

133 (9) PENALTIES.—

134 (a) If a business fails to comply with this section,
135 neither the business nor the person or persons engaging in the,
136 its members, and those interested in doing such business may not
137 maintain any action, suit, or proceeding in any court of this
138 state with respect to or on behalf of such business until this
139 section is complied with. An action, suit, or proceeding may not

399901 - h0169-strike 2.docx

Published On: 3/8/2017 6:46:45 PM

Amendment No. 1

140 be maintained in any court of this state by any successor or
141 assignee of such business on any right, claim, or demand arising
142 out of the transaction of business by such business in this
143 state until this section has been complied with.

144 (b) The failure of a business to comply with this
145 section does not impair the validity of any contract, deed,
146 mortgage, security interest, lien, or act of such business and
147 does not prevent such business from defending any action, suit,
148 or proceeding in any court of this state. However, a party
149 aggrieved by a noncomplying business may be awarded reasonable
150 attorney attorney's fees and court costs necessitated by the
151 noncomplying business.

152 (c) Any person who fails to comply with this section
153 commits a noncriminal violation as defined in s. 775.08
154 misdemeanor of the second degree, punishable as provided in s.
155 775.082 or s. 775.083.

156 (10) POWERS OF DIVISION DEPARTMENT.—The division
157 Department of State is granted the power reasonably necessary to
158 enable it to administer this section efficiently and, to perform
159 the duties herein imposed upon it.

160 (11) FORMS.—Registration, cancellation, and renewal
161 shall be made on forms prescribed by the division Department of
162 State, which may include the uniform business report, pursuant
163 to s. 606.06, as a means of satisfying the requirement of this
164 section.

399901 - h0169-strike 2.docx

Published On: 3/8/2017 6:46:45 PM

Amendment No. 1

165 (12) PROCESSING FEES.—The division Department of
166 State shall charge and collect nonrefundable processing fees as
167 follows:

168 (a) For registration of a fictitious name, \$50.

169 (b) For cancellation or cancellation and
170 reregistration of a fictitious name, \$50.

171 (c) For renewal of a fictitious name registration,
172 \$50.

173 (d) For furnishing a certified copy of a fictitious
174 name registration document, \$30.

175 (e) For furnishing a certificate of status, \$10.

176 (13) DEPOSIT OF FUNDS.—All funds required to be paid
177 to the division Department of State pursuant to this section
178 shall be collected and deposited into the General Revenue Fund.

179 (14) PROHIBITION.—A fictitious name registered as
180 provided in this section may not contain the following words,
181 abbreviations, or designations:

182 (a) "Corporation," or "incorporated," or the
183 abbreviations "Corp.," or "Inc.," unless the person or business
184 for which the name is registered is incorporated or has obtained
185 a certificate of authority to transact business in this state
186 pursuant to part I of chapter 607 or chapter 617.

187 (b) "Limited partnership," "limited liability limited
188 partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the
189 person or business for which the name is registered is organized

Amendment No. 1

190 as a limited partnership or has obtained a certificate of
191 authority to transact business in this state pursuant to ss.
192 620.1101-620.2205.

193 (c) "Limited liability partnership," "LLP," or
194 "L.L.P.," unless the person or business for which the name is
195 registered is registered as a limited liability partnership or
196 has obtained a certificate of authority to transact business in
197 this state pursuant to s. 620.9102.

198 (d) "Limited liability company," "LLC," or "L.L.C.,"
199 unless the person or business for which the name is registered
200 is organized as a limited liability company or has obtained a
201 certificate of authority to transact business in this state
202 pursuant to chapter 605.

203 (e) "Professional association," "P.A.," or
204 "chartered," unless the person or business for which the name is
205 registered is organized as a professional corporation pursuant
206 to chapter 621, or is organized as a professional corporation
207 pursuant to a similar law of another jurisdiction and has
208 obtained a certificate of authority to transact business in this
209 state pursuant to chapter 607.

210 (f) "Professional limited liability company," "PLLC,"
211 "P.L.L.C.," "PL," or "P.L.," unless the person or business for
212 which the name is registered is organized as a professional
213 limited liability company pursuant to chapter 621, or is
214 organized as a professional limited liability company pursuant

399901 - h0169-strike 2.docx

Published On: 3/8/2017 6:46:45 PM

Amendment No. 1

215 | to a similar law of another jurisdiction and has obtained a
216 | certificate of authority to transact business in this state
217 | pursuant to chapter 605.

218 | (15) LEGAL DESIGNATION OF ENTITY.—Notwithstanding any
219 | other provision of law to the contrary, a fictitious name
220 | registered as provided in this section for a corporation,
221 | limited liability company, limited liability partnership, or
222 | limited partnership is not required to contain the designation
223 | of the type of legal entity in which the person or business is
224 | organized, including the terms "corporation," "limited liability
225 | company," "limited liability partnership," "limited
226 | partnership," or any abbreviation or derivative thereof.

227 | Section 2. This act shall take effect July 1, 2017.
228 |
229 |