

Amendment No.

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WITHDRAWN	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>	

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

**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.

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16        ~~(b)-(e)~~ "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

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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

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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 shall  
75 be valid for a period beginning on the date of registration or  
76 reregistration and expiring on December 31 of the 5<sup>th</sup> calendar  
77 year thereafter, counting the period from registration or  
78 reregistration through December 31 of the year of registration  
79 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 5<sup>th</sup> calendar year.

84 (6) RENEWAL.—

85 (a) Renewal of a fictitious name registration shall occur  
86 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).

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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 actively  
114 licensed to practice law in this state, by a person actively

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

132 (9) PENALTIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

185 (b) "Limited partnership," "limited liability limited  
186 partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the  
187 person or business for which the name is registered is organized  
188 as a limited partnership or has obtained a certificate of



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189 authority to transact business in this state pursuant to ss.  
190 620.1101-620.2205.

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

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

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

208 (f) "Professional limited liability company," "PLLC,"  
209 "P.L.L.C.," "PL," or "P.L.," unless the person or business for  
210 which the name is registered is organized as a professional  
211 limited liability company pursuant to chapter 621, or is  
212 organized as a professional limited liability company pursuant  
213 to a similar law of another jurisdiction and has obtained a

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214 certificate of authority to transact business in this state  
215 pursuant to chapter 605.

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

225 Section 2. This act shall take effect July 1, 2017.

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