

1 A bill to be entitled
 2 An act relating to fictitious name registration;
 3 amending s. 865.09, F.S.; defining the term
 4 "registrant"; revising the information required to
 5 register a fictitious name; revising requirements for
 6 a change in registration; revising provisions
 7 concerning the expiration of a registration;
 8 prohibiting a renewal of a registration if the
 9 registered fictitious name is prohibited by specified
 10 provisions; specifying additional forms of business
 11 organization that may not be required to register
 12 under certain circumstances; revising provisions
 13 concerning penalties for violations; specifying
 14 additional terms that may not be included in a
 15 fictitious name; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 865.09, Florida Statutes, is amended to
 20 read:

21 865.09 Fictitious name registration.—

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

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

25 (a) ~~(b)~~ "Business" means any enterprise or venture in which

26 | a person sells, buys, exchanges, barter, deals, or represents
 27 | the dealing in any thing or article of value, or renders
 28 | services for compensation.

29 | (b)~~(e)~~ "Division" means the Division of Corporations of
 30 | the Department of State.

31 | (c)~~(a)~~ "Fictitious name" means any name under which a
 32 | person transacts business in this state, other than the person's
 33 | legal name.

34 | (d) "Registrant" means a person who registers a fictitious
 35 | name with the division.

36 | (3) REGISTRATION.—

37 | (a) A person may not engage in business under a fictitious
 38 | name unless the person first registers the name with the
 39 | division by filing a registration ~~sworn statement~~ listing:

40 | 1.~~(a)~~ The name to be registered.

41 | 2.~~(b)~~ The mailing address of the business.

42 | 3.~~(c)~~ The name and address of each registrant ~~owner and,~~
 43 | ~~if a corporation, its federal employer's identification number~~
 44 | ~~and Florida incorporation or registration number.~~

45 | 4. If the registrant is a business entity that was
 46 | required to file incorporation or similar documents with its
 47 | state of organization when it was organized, such entity must be
 48 | registered with the division and in active status with the
 49 | division; provide its Florida document registration number; and
 50 | provide its federal employer identification number if the entity

51 has such a number.

52 5.(d) Certification by at least one registrant ~~the~~
53 ~~applicant~~ that the intention to register such fictitious name
54 has been advertised at least once in a newspaper as defined in
55 chapter 50 in the county in which ~~where~~ the principal place of
56 business of the registrant ~~applicant~~ will be located.

57 6.(e) Any other information the division may deem
58 necessary to adequately inform other governmental agencies and
59 the public as to the registrant ~~persons~~ so conducting business.

60 (b) Such registration ~~statement~~ shall be accompanied by
61 the applicable processing fees and any other taxes or penalties
62 owed to the state.

63 (c) If the registrant is a general partnership that is not
64 registered with the division, its partners are the registrants
65 and not the partnership entity. If the registrant is a general
66 partnership that is registered with the division, the
67 partnership is the registrant and it must be in active status
68 with the division.

69 (4) CANCELLATION AND REREGISTRATION ~~CHANGE OF OWNERSHIP.-~~
70 ~~If the ownership of a business registered under this section~~
71 ~~changes, the owner of record with the division~~ a registrant
72 ceases to engage in business under a registered fictitious name,
73 such registrant shall file a cancellation with the division ~~and~~
74 ~~reregistration that meets the requirements set forth in~~
75 ~~subsection (3)~~ within 30 days after the cessation occurs ~~the~~

76 ~~occurrence of such change.~~ If such cessation is in connection
77 with a transfer of the business and the transferee will engage
78 in business under the registered fictitious name, the transferee
79 may reregister the name pursuant to subsection (3) at the same
80 time as the cancellation is filed.

81 (5) TERM.—

82 (a) A fictitious name registered under this section shall
83 be valid for a period beginning on the date of registration and
84 expiring on December 31 of the 5th calendar year thereafter,
85 counting the period from registration through December 31 of the
86 year of registration as the first year.

87 (b) Each renewal under subsection (6) is valid for a
88 period of 5 years beginning on January 1 of the year following
89 the prior registration expiration date and expiring ~~of 5 years~~
90 ~~and expires~~ on December 31 of the 5th calendar year.

91 (6) RENEWAL.—

92 (a) Renewal of a fictitious name registration shall occur
93 on or after January 1 and on or before December 31 of the
94 expiration year. Upon timely filing of a renewal statement, the
95 effectiveness of the name registration is continued for 5 years
96 as provided in subsection (5).

97 (b) In the ~~last~~ year that a ~~of the~~ registration is to
98 expire, the division shall notify the ~~owner or~~ registrant of the
99 fictitious name registration of the upcoming expiration of the
100 fictitious name. If the ~~owner or~~ registrant of the fictitious

101 name has provided the division ~~department~~ with an electronic
102 mail address, such notice shall be by electronic transmission.

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

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

116 (7) EXEMPTIONS.—A business formed by an attorney actively
117 licensed to practice law in this state, by a person actively
118 licensed by the Department of Business and Professional
119 Regulation or the Department of Health for the purpose of
120 practicing his or her licensed profession, or by any
121 corporation, limited liability company, partnership, or other
122 business ~~commercial~~ entity that is actively organized or
123 registered and in active status with the division ~~Department of~~
124 ~~State~~ is not required to register its name pursuant to this
125 section, unless the name under which business is to be conducted

126 | differs from the name as licensed or registered.

127 | (8) EFFECT OF REGISTRATION.—Notwithstanding ~~the provisions~~
 128 | ~~of~~ any other law, registration under this section is for public
 129 | notice only, and does not give ~~gives~~ rise to a ~~ne~~ presumption of
 130 | the registrant's rights to own or use the name registered, nor
 131 | does it affect trademark, service mark, trade name, or corporate
 132 | or other business entity name rights previously acquired by
 133 | others in the same or a similar name. Registration under this
 134 | section does not reserve a fictitious name against future use.

135 | (9) PENALTIES.—

136 | (a) If a business fails to comply with this section,
 137 | neither the business nor the person or persons engaging in the,
 138 | ~~its members, and those interested in doing such~~ business may ~~not~~
 139 | maintain any action, suit, or proceeding in any court of this
 140 | state with respect to or on behalf of such business until this
 141 | section is complied with. An action, suit, or proceeding may not
 142 | be maintained in any court of this state by any successor or
 143 | assignee of such business on any right, claim, or demand arising
 144 | out of the transaction of business by such business in this
 145 | state until this section has been complied with.

146 | (b) The failure of a business to comply with this section
 147 | does not impair the validity of any contract, deed, mortgage,
 148 | security interest, lien, or act of such business and does not
 149 | prevent such business from defending any action, suit, or
 150 | proceeding in any court of this state. However, a party

151 aggrieved by a noncomplying business may be awarded reasonable
152 attorney ~~attorney's~~ fees and court costs necessitated by the
153 noncomplying business.

154 (c) Any person who fails to comply with this section
155 commits a noncriminal violation as defined in s. 775.08
156 ~~misdemeanor of the second degree~~, punishable as provided in ~~s.~~
157 ~~775.082~~ or s. 775.083.

158 (10) POWERS OF DIVISION ~~DEPARTMENT~~.—The division
159 ~~Department of State~~ is granted the power reasonably necessary to
160 enable it to administer this section efficiently and~~7~~ to perform
161 the duties herein imposed upon it.

162 (11) FORMS.—Registration, cancellation, and renewal shall
163 be made on forms prescribed by the division ~~Department of State~~,
164 which may include the uniform business report, pursuant to s.
165 606.06, as a means of satisfying the requirement of this
166 section.

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

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

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

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

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

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

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

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

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

188 (b) "Limited partnership," "limited liability limited
 189 partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the
 190 person or business for which the name is registered is organized
 191 as a limited partnership or has obtained a certificate of
 192 authority to transact business in this state pursuant to ss.
 193 620.1101-620.2205.

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

199 (d) "Limited liability company," "LLC," or "L.L.C.,"
 200 unless the person or business for which the name is registered

201 is organized as a limited liability company or has obtained a
202 certificate of authority to transact business in this state
203 pursuant to chapter 605.

204 (15) LEGAL DESIGNATION OF ENTITY.—Notwithstanding any
205 other ~~provision of~~ law to the contrary, a fictitious name
206 registered as provided in this section for a corporation,
207 limited liability company, limited liability partnership, or
208 limited partnership is not required to contain the designation
209 of the type of legal entity in which the person or business is
210 organized, including the terms "corporation," "limited liability
211 company," "limited liability partnership," "limited
212 partnership," or any abbreviation or derivative thereof.

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