

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 is or ~~applicant~~ will be located.

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

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

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

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

76 ~~subsection (3)~~ within 30 days after the cessation occurs the
77 ~~occurrence of such change.~~ If such cessation is in connection
78 with a transfer of the business and, as a result, a new person
79 will engage in business under the registered fictitious name,
80 such new person may reregister the name pursuant to subsection
81 (3) at the same time as the cancellation is filed.

82 (5) TERM.—

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

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

92 (6) RENEWAL.—

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

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

101 fictitious name no later than September 1. If the ~~owner or~~
102 registrant of the fictitious name has provided the division
103 ~~department~~ with an electronic mail address, such notice shall be
104 by electronic transmission.

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

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

118 (7) EXEMPTIONS.—A business formed by an attorney actively
119 licensed to practice law in this state, by a person actively
120 licensed by the Department of Business and Professional
121 Regulation or the Department of Health for the purpose of
122 practicing his or her licensed profession, or by any
123 corporation, limited liability company, partnership, or other
124 business commercial entity that is ~~actively~~ organized or
125 registered and in active status with the division ~~Department of~~

126 ~~State~~ is not required to register its name pursuant to this
127 section, unless the name under which business is to be conducted
128 differs from the name as licensed or registered.

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

137 (9) PENALTIES.—

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

148 (b) The failure of a business to comply with this section
149 does not impair the validity of any contract, deed, mortgage,
150 security interest, lien, or act of such business and does not

151 prevent such business from defending any action, suit, or
152 proceeding in any court of this state. However, a party
153 aggrieved by a noncomplying business may be awarded reasonable
154 attorney ~~attorney's~~ fees and court costs necessitated by the
155 noncomplying business.

156 (c) Any person who fails to comply with this section
157 commits a noncriminal violation as defined in s. 775.08
158 ~~misdemeanor of the second degree~~, punishable as provided in ~~s.~~
159 ~~775.082~~ or s. 775.083.

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

164 (11) FORMS.—Registration, cancellation, and renewal shall
165 be made on forms prescribed by the division ~~Department of State~~,
166 which may include the uniform business report, pursuant to s.
167 606.06, as a means of satisfying the requirement of this
168 section.

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

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

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

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

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

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

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

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

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

190 (b) "Limited partnership," "limited liability limited
191 partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the
192 person or business for which the name is registered is organized
193 as a limited partnership or has obtained a certificate of
194 authority to transact business in this state pursuant to ss.
195 620.1101-620.2205.

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

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

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

213 (f) "Professional limited liability company," "PLLC,"
214 "P.L.L.C.," "PL," or "P.L.," unless the person or business for
215 which the name is registered is organized as a professional
216 limited liability company pursuant to chapter 621, or is
217 organized as a professional limited liability company pursuant
218 to a similar law of another jurisdiction and has obtained a
219 certificate of authority to transact business in this state
220 pursuant to chapter 605.

221 (15) LEGAL DESIGNATION OF ENTITY.—Notwithstanding any
222 other ~~provision of~~ law to the contrary, a fictitious name
223 registered as provided in this section for a corporation,
224 limited liability company, limited liability partnership, or
225 limited partnership is not required to contain the designation

226 | of the type of legal entity in which the person or business is
227 | organized, including the terms "corporation," "limited liability
228 | company," "limited liability partnership," "limited
229 | partnership," or any abbreviation or derivative thereof.

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