



392970

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2017	.	
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The Committee on Commerce and Tourism (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 865.09, Florida Statutes, is reordered  
and amended to read:

865.09 Fictitious name registration.—

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

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



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11            (c)~~(a)~~ "Fictitious name" means any name under which a  
12 person transacts business in this state, other than the person's  
13 legal name.

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

18            (b)~~(e)~~ "Division" means the Division of Corporations of the  
19 Department of State.

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

22            (3) REGISTRATION.—

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

26            1.~~(a)~~ The name to be registered.

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

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

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

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



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

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

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

50 (c) If the registrant is a general partnership that is not  
51 registered with the division, its partners are the registrants  
52 and not the partnership entity. If the registrant is a general  
53 partnership that is registered with the division, the  
54 partnership is the registrant and it must be in active status  
55 with the division.

56 (4) CANCELLATION AND REREGISTRATION CHANGE OF OWNERSHIP.—If  
57 a registrant ceases to engage in business under a registered  
58 fictitious name, such registrant the ownership of a business  
59 registered under this section changes, the owner of record with  
60 the division shall file a cancellation with the division and  
61 reregistration that meets the requirements set forth in  
62 subsection (3) within 30 days after the cessation occurs the  
63 occurrence of such change. If such cessation is in connection  
64 with a transfer of the business and, as a result, a new person  
65 will engage in business under the registered fictitious name,  
66 such new person may reregister the name pursuant to subsection  
67 (3) at the same time as the cancellation is filed.

68 (5) TERM.—



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69           (a) A fictitious name registered under this section shall  
70 be valid for a period beginning on the date of registration and  
71 expiring on December 31 of the 5th calendar year thereafter,  
72 counting the period from registration through December 31 of the  
73 year of registration as the first calendar year.

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

78           (6) RENEWAL.—

79           (a) Renewal of a fictitious name registration shall occur  
80 on or after January 1 and on or before December 31 of the  
81 expiration year. Upon timely filing of a renewal statement, the  
82 effectiveness of the name registration is continued for 5 years  
83 as provided in subsection (5).

84           (b) In the ~~last~~ year that a ~~of the~~ registration is to  
85 expire, the division shall notify the ~~owner or~~ registrant of the  
86 fictitious name registration of the upcoming expiration of the  
87 fictitious name no later than September 1. If the ~~owner or~~  
88 registrant of the fictitious name has provided the division  
89 ~~department~~ with an electronic mail address, such notice shall be  
90 by electronic transmission.

91           (c) If a registrant ~~the owner~~ of the fictitious name  
92 registration fails to timely file a renewal and pay the  
93 appropriate processing fees prior to December 31 of the year of  
94 expiration, the fictitious name registration expires. The  
95 division shall remove any expired or canceled fictitious name  
96 registration from its records and may purge such registrations.  
97 Failure to receive the notice ~~statement~~ of expiration ~~renewal~~



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98 required by paragraph (b) does ~~shall~~ not constitute grounds for  
99 appeal of a registration's expiration or removal from the  
100 division's records.

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

104 (7) EXEMPTIONS.—A business formed by an attorney actively  
105 licensed to practice law in this state, by a person actively  
106 licensed by the Department of Business and Professional  
107 Regulation or the Department of Health for the purpose of  
108 practicing his or her licensed profession, or by any  
109 corporation, limited liability company, partnership, or other  
110 business ~~commercial~~ entity that is actively organized or  
111 registered and in active status with the division ~~Department of~~  
112 ~~State~~ is not required to register its name pursuant to this  
113 section, unless the name under which business is to be conducted  
114 differs from the name as licensed or registered.

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

123 (9) PENALTIES.—

124 (a) If a business fails to comply with this section, the  
125 business or the person or persons engaging in the, ~~its members,~~  
126 ~~and those interested in doing such~~ business may not maintain any



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127 action, suit, or proceeding in any court of this state with  
128 respect to or on behalf of such business until this section is  
129 complied with. An action, suit, or proceeding may not be  
130 maintained in any court of this state by any successor or  
131 assignee of such business on any right, claim, or demand arising  
132 out of the transaction of business by such business in this  
133 state until this section has been complied with.

134 (b) The failure of a business to comply with this section  
135 does not impair the validity of any contract, deed, mortgage,  
136 security interest, lien, or act of such business and does not  
137 prevent such business from defending any action, suit, or  
138 proceeding in any court of this state. However, a party  
139 aggrieved by a noncomplying business may be awarded reasonable  
140 attorney ~~attorney's~~ fees and court costs necessitated by the  
141 noncomplying business.

142 (c) Any person who fails to comply with this section  
143 commits a noncriminal violation as defined in s. 775.08  
144 ~~misdemeanor of the second degree~~, punishable as provided in ~~s.~~  
145 ~~775.082~~ or s. 775.083.

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

150 (11) FORMS.—Registration, cancellation, and renewal shall  
151 be made on forms prescribed by the division ~~Department of State~~,  
152 which may include the uniform business report, pursuant to s.  
153 606.06, as a means of satisfying the requirement of this  
154 section.

155 (12) PROCESSING FEES.—The division ~~Department of State~~



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156 shall charge and collect nonrefundable processing fees as  
157 follows:

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

159 (b) For cancellation or for cancellation and reregistration  
160 of a fictitious name, \$50.

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

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

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

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

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

171 (a) "Corporation," ~~or "incorporated,"~~ ~~or the abbreviations~~  
172 "Corp.," or "Inc.," unless the person or business for which the  
173 name is registered is incorporated or has obtained a certificate  
174 of authority to transact business in this state pursuant to ~~part~~  
175 ~~of~~ chapter 607 or chapter 617.

176 (b) "Limited liability company," "LLC," or "L.L.C.," unless  
177 the person or business for which the name is registered is  
178 organized as a limited liability company or has obtained a  
179 certificate of authority to transact business in this state  
180 pursuant to chapter 605.

181 (c) "Limited liability partnership," "LLP," or "L.L.P.,"  
182 unless the person or business for which the name is registered  
183 is organized as a limited liability partnership or has in effect  
184 a statement of foreign qualification in this state pursuant to



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185 ss. 620.81001-620.9902.

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

192 (e) "Professional association," "P.A.," or "chartered,"  
193 unless the person or business for which the name is registered  
194 is organized as a professional corporation pursuant to chapter  
195 621, or is organized as a professional corporation pursuant to a  
196 similar law of another jurisdiction and has obtained a  
197 certificate of authority to transact business in this state  
198 pursuant to chapter 607.

199 (f) "Professional limited liability company," "PLLC,"  
200 "P.L.L.C.," "PL," or "P.L.," unless the person or business for  
201 which the name is registered is organized as a professional  
202 limited liability company pursuant to chapter 621, or is  
203 organized as a professional limited liability company pursuant  
204 to a similar law of another jurisdiction and has obtained a  
205 certificate of authority to transact business in this state  
206 pursuant to chapter 605.

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





214 liability partnership," "limited partnership," or any  
215 abbreviation or derivative thereof.

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

217

218 ===== T I T L E A M E N D M E N T =====

219 And the title is amended as follows:

220 Delete everything before the enacting clause  
221 and insert:

222 A bill to be entitled  
223 An act relating to fictitious name registration;  
224 reordering and amending s. 865.09, F.S.; defining the  
225 term "registrant"; revising the information required  
226 to register a fictitious name; revising requirements  
227 for a change in registration; revising provisions  
228 concerning the expiration of a registration;  
229 prohibiting a renewal of a registration if the  
230 registered fictitious name is prohibited by specified  
231 provisions; specifying additional forms of business  
232 organization that may not be required to register  
233 under certain circumstances; revising provisions  
234 concerning penalties for violations; specifying that  
235 certain powers previously granted to the Department of  
236 State are granted to the Division of Corporations;  
237 specifying additional terms that may not be included  
238 in a fictitious name; providing an effective date.