

By Senator Stargel

22-00344-17

2017346__

1 A bill to be entitled
2 An act relating to fictitious names; amending s.
3 865.09, F.S.; defining the term "registrant"; revising
4 filing requirements for registration of a fictitious
5 name; specifying who is considered the registrant in a
6 general partnership under certain circumstances;
7 requiring certain persons to register a fictitious
8 name under certain circumstances within a specified
9 time; requiring a person to file a cancellation for a
10 fictitious name registration within a specified time
11 under certain circumstances; authorizing the
12 reregistration of a fictitious name after the transfer
13 of a business under certain circumstances; providing
14 requirements for such reregistration; clarifying the
15 length of time that the initial registration of a
16 fictitious name is valid; providing requirements for
17 renewal; prohibiting renewal of a fictitious name
18 under certain circumstances; exempting limited
19 liability companies from specified registration
20 requirements under certain circumstances; revising
21 penalty provisions for noncompliance to include a
22 prohibition of certain actions, suits, or proceedings;
23 revising processing fees to include registration with
24 or without a change of ownership; adding words and
25 abbreviations that may not be contained in a
26 fictitious name, under certain circumstances;
27 conforming provisions to changes made by the act;
28 making technical changes; providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Section 865.09, Florida Statutes, is amended to

22-00344-17

2017346__

33 read:

34 865.09 Fictitious name registration.—

35 (1) SHORT TITLE.—This section may be cited as the
36 “Fictitious Name Act.”

37 (2) DEFINITIONS.—As used in this section:

38 (c)~~(a)~~ “Fictitious name” means any name under which a
39 person transacts business in this state, other than the person’s
40 legal name.

41 (a)~~(b)~~ “Business” means any enterprise or venture in which
42 a person sells, buys, exchanges, barters, deals, or represents
43 the dealing in any thing or article of value, or renders
44 services for compensation.

45 (b)~~(e)~~ “Division” means the Division of Corporations of the
46 Department of State.

47 (d) “Registrant” means a person who registers a fictitious
48 name with the division.

49 (3) REGISTRATION.—

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

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

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

55 3.~~(c)~~ The name and address of each registrant ~~owner and, if~~
56 ~~a corporation, its federal employer’s identification number and~~
57 ~~Florida incorporation or registration number.~~

58 4. If the registrant is a business entity that was required
59 to file incorporation or similar documents with its state of
60 organization when it was organized, the registrant’s
61 incorporation number, document registration number or other

22-00344-17

2017346__

62 similar identifying number in the jurisdiction in which it is
63 organized, and its federal employer identification number, if
64 applicable. The business entity must be registered and in active
65 status with the division.

66 5.~~(d)~~ Certification by at least one registrant ~~the~~
67 ~~applicant~~ that the intention to register the ~~such~~ fictitious
68 name has been advertised at least once in a newspaper as defined
69 in chapter 50 in the county where the principal place of
70 business of the registrant ~~applicant will be~~ located.

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

74 (b) Such registration must ~~statement shall~~ be accompanied
75 by the applicable processing fees and any other taxes or
76 penalties owed to the state.

77 (c) If the person is a general partnership that is not
78 registered with the division, the partners, rather than the
79 partnership entity, are the registrants. If the person is a
80 general partnership that is registered with the division, the
81 partnership is the registrant and must be reported by the
82 division as having an active status.

83 (4) CANCELLATION AND REREGISTRATION ~~CHANGE OF OWNERSHIP.~~—If
84 a registrant ceases to engage in business under a registered
85 fictitious name, such registrant ~~the ownership of a business~~
86 ~~registered under this section changes, the owner of record with~~
87 ~~the division shall file a cancellation~~ with the division ~~and~~
88 ~~reregistration that meets the requirements set forth in~~
89 ~~subsection (3) within 30 days after~~ the cessation occurs ~~the~~
90 ~~occurrence of such change.~~ If such cessation is in connection

22-00344-17

2017346__

91 with a transfer of the business and the transferee will engage
92 in business under the registered fictitious name, the transferee
93 may reregister the name pursuant to the requirements for
94 registration specified in subsection (3) at the same time the
95 registrant files the cancellation.

96 (5) TERM.—Initial registration of a fictitious name
97 registered under this section is shall be valid for a period of
98 up to 5 years, determined by the initial registration date. The
99 period of time from the date of initial registration through
100 December 31 of the year in which the fictitious name is first
101 registered is considered the first year, with the registration
102 expiring on December 31 of the 5th calendar year of registration
103 of 5 years and expires on December 31 of the 5th year.

104 (6) RENEWAL.—

105 (a) A registrant may request renewal of a fictitious name
106 registration at any time during the year in which the
107 registration expires, but no later than December 31. Each
108 renewal pursuant to this subsection is valid for a period of 5
109 years, beginning on January 1 of the renewal shall occur on or
110 after January 1 and on or before December 31 of the expiration
111 year. Upon timely filing of a renewal statement, the
112 effectiveness of the name registration is continued for 5 years
113 as provided in subsection (5).

114 (b) Before December 31 of the year in which the
115 registration is scheduled to expire In the last year of the
116 registration, the division shall provide notify the owner or
117 registrant with a notice of the expiration of the fictitious
118 name. If the owner or registrant of the fictitious name has
119 provided the division department with an electronic mail

22-00344-17

2017346__

120 address, the ~~such~~ notice shall be by electronic transmission.

121 (c) If a registrant ~~the owner of the name registration~~
122 fails to timely file a renewal and pay the appropriate
123 processing fees before ~~prior to~~ December 31 of the expiration
124 ~~year of expiration~~, the fictitious name registration expires.
125 The division shall remove any expired or canceled fictitious
126 name registration from its records and may purge such
127 registrations. Failure to receive the notice ~~statement~~ of
128 expiration ~~renewal~~ required by paragraph (b) does ~~shall~~ not
129 constitute grounds for appeal of a registration's expiration or
130 removal from the division's records.

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

134 (7) EXEMPTIONS.—A business formed by an attorney actively
135 licensed to practice law in this state, by a person actively
136 licensed by the Department of Business and Professional
137 Regulation or the Department of Health for the purpose of
138 practicing his or her licensed profession, or by any
139 corporation, limited liability company, partnership, or other
140 business ~~commercial~~ entity that is actively organized or
141 registered and of active status with the division ~~Department of~~
142 ~~State~~ is not required to register its name pursuant to this
143 section, unless the name under which business is to be conducted
144 differs from the name as licensed or registered.

145 (8) EFFECT OF REGISTRATION.—Notwithstanding the provisions
146 of any other law, registration under this section is for public
147 notice only, and gives rise to no presumption of the
148 registrant's rights to own or use the name registered, nor does

22-00344-17

2017346__

149 it affect trademark, service mark, trade name, or corporate or
150 other business entity name rights previously acquired by others
151 in the same or a similar name. Registration under this section
152 does not reserve a fictitious name against future use.

153 (9) PENALTIES.—

154 (a) If a business fails to comply with this section, the
155 business and the person or persons engaging in the, ~~its members,~~
156 ~~and those interested in doing such~~ business may not maintain any
157 action, suit, or proceeding in any court of this state with
158 respect to or on behalf of such business until it complies with
159 ~~this section is complied with.~~ An action, suit, or proceeding
160 may not be maintained in any court of this state by any
161 successor or assignee of such business on any right, claim, or
162 demand arising out of the transaction of business by such
163 business in this state until the business complies with this
164 section ~~has been complied with.~~

165 (b) The failure of a business to comply with this section
166 does not impair the validity of any contract, deed, mortgage,
167 security interest, lien, or act of such business and does not
168 prevent such business from defending any action, suit, or
169 proceeding in any court of this state. However, a party
170 aggrieved by a noncomplying business may be awarded reasonable
171 attorney ~~attorney's~~ fees and court costs necessitated by the
172 noncomplying business.

173 (c) Any person who fails to comply with this section
174 commits a noncriminal violation as defined in s. 775.08
175 ~~misdemeanor of the second degree,~~ punishable as provided in s.
176 775.082 or s. 775.083.

177 (10) POWERS OF DIVISION ~~DEPARTMENT.~~—The division ~~Department~~

22-00344-17

2017346__

178 ~~of State~~ is granted the power reasonably necessary to enable it
179 to administer this section efficiently and~~7~~ to perform the
180 duties herein imposed upon it.

181 (11) FORMS.—Registration, cancellation, and renewal shall
182 be made on forms prescribed by the division ~~Department of State~~,
183 which may include the uniform business report, pursuant to s.
184 606.06, as a means of satisfying the requirement of this
185 section.

186 (12) PROCESSING FEES.—The division ~~Department of State~~
187 shall charge and collect nonrefundable processing fees as
188 follows:

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

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

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

193 (d) For furnishing a certified copy of a fictitious name
194 document, \$30.

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

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

199 (14) PROHIBITION.—A fictitious name registered as provided
200 in this section may not contain the words:

201 (a) "Corporation" or "Incorporated," or the abbreviations
202 "Corp." or "Inc.," unless the person or business for which the
203 name is registered is incorporated or has obtained a certificate
204 of authority to transact business in this state pursuant to part
205 I of chapter 607 or chapter 617.

206 (b) "Limited Partnership," or "Limited Liability Limited

22-00344-17

2017346__

207 Partnership," or the abbreviation "LP," "L.P.," "LLLP," or
208 "L.L.L.P.," unless the person or business for which the name is
209 registered is organized as a limited partnership or has obtained
210 a certificate of authority to transact business in this state
211 pursuant to ss. 620.1101 through 620.2205.

212 (c) "Limited Liability Partnership," or the abbreviation
213 "LLP" or "L.L.P.," unless the person or business for which the
214 name is registered is registered as a limited liability
215 partnership or has obtained a certificate of authority to
216 transact business in this state pursuant to s. 620.9102.

217 (d) "Limited Liability Company," or the abbreviation "LLC"
218 or "L.L.C.," unless the person or business for which the name is
219 registered is organized as a limited liability company or has
220 obtained a certificate of authority to transact business in this
221 state pursuant to chapter 605.

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

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

232