

By the Committee on Commerce and Tourism; and Senator Stargel

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1 A bill to be entitled
2 An act relating to fictitious name registration;
3 reordering and amending s. 865.09, F.S.; defining the
4 term "registrant"; revising the information required
5 to register a fictitious name; revising requirements
6 for 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; clarifying that
14 the Division of Corporations administers the
15 provisions of ch. 865, F.S., relating to fictitious
16 name registration; specifying additional terms that
17 may not be included in a fictitious name; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 865.09, Florida Statutes, is reordered
23 and amended to read:

24 865.09 Fictitious name registration.—

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

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

28 (c) ~~(a)~~ "Fictitious name" means any name under which a
29 person transacts business in this state, other than the person's

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30 legal name.

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

35 (b)~~(c)~~ "Division" means the Division of Corporations of the
36 Department of State.

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

39 (3) REGISTRATION.—

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

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

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

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

48 4. If the registrant is a business entity that was required
49 to file incorporation or similar documents with its state of
50 organization when it was organized, such entity must be
51 registered with the division and in active status with the
52 division, provide its incorporation number, and provide its
53 federal employer identification number if the entity has such a
54 number.

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

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59 business of the registrant is or ~~applicant~~ will be located.

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

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

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

73 (4) CANCELLATION AND REREGISTRATION CHANGE OF OWNERSHIP.—If
74 a registrant ceases to engage in business under a registered
75 fictitious name, such registrant the ownership of a business
76 registered under this section changes, the owner of record with
77 the division shall file a cancellation with the division and
78 reregistration that meets the requirements set forth in
79 subsection (3) within 30 days after the cessation occurs the
80 occurrence of such change. If such cessation is in connection
81 with a transfer of the business and, as a result, a new person
82 will engage in business under the registered fictitious name,
83 such new person may reregister the name pursuant to subsection
84 (3) at the same time as the cancellation is filed.

85 (5) TERM.—

86 (a) A fictitious name registered under this section shall
87 be valid for a period beginning on the date of registration and

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88 expiring on December 31 of the 5th calendar year thereafter,
89 counting the period from registration through December 31 of the
90 year of registration as the first calendar year.

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

95 (6) RENEWAL.—

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

101 (b) In the ~~last~~ year that a ~~of the~~ registration is to
102 expire, the division shall notify the ~~owner or~~ registrant of the
103 fictitious name registration of the upcoming expiration of the
104 fictitious name no later than September 1. If the ~~owner or~~
105 registrant of the fictitious name has provided the division
106 ~~department~~ with an electronic mail address, such notice shall be
107 by electronic transmission.

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

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117 division's records.

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

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

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

140 (9) PENALTIES.—

141 (a) If a business fails to comply with this section, the
142 business or the person or persons engaging in the, ~~its members,~~
143 ~~and those interested in doing such~~ business may not maintain any
144 action, suit, or proceeding in any court of this state with
145 respect to or on behalf of such business until this section is

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146 complied with. An action, suit, or proceeding may not be
147 maintained in any court of this state by any successor or
148 assignee of such business on any right, claim, or demand arising
149 out of the transaction of business by such business in this
150 state until this section has been complied with.

151 (b) The failure of a business to comply with this section
152 does not impair the validity of any contract, deed, mortgage,
153 security interest, lien, or act of such business and does not
154 prevent such business from defending any action, suit, or
155 proceeding in any court of this state. However, a party
156 aggrieved by a noncomplying business may be awarded reasonable
157 attorney ~~attorney's~~ fees and court costs necessitated by the
158 noncomplying business.

159 (c) Any person who fails to comply with this section
160 commits a noncriminal violation as defined in s. 775.08
161 ~~misdemeanor of the second degree~~, punishable as provided in ~~s.~~
162 ~~775.082~~ or s. 775.083.

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

167 (11) FORMS.—Registration, cancellation, and renewal shall
168 be made on forms prescribed by the division ~~Department of State~~,
169 which may include the uniform business report, pursuant to s.
170 606.06, as a means of satisfying the requirement of this
171 section.

172 (12) PROCESSING FEES.—The division ~~Department of State~~
173 shall charge and collect nonrefundable processing fees as
174 follows:

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- 175 (a) For registration of a fictitious name, \$50.
- 176 (b) For cancellation or for cancellation and reregistration
177 of a fictitious name, \$50.
- 178 (c) For renewal of a fictitious name registration, \$50.
- 179 (d) For furnishing a certified copy of a fictitious name
180 registration document, \$30.
- 181 (e) For furnishing a certificate of status, \$10.
- 182 (13) DEPOSIT OF FUNDS.—All funds required to be paid to the
183 division ~~Department of State~~ pursuant to this section shall be
184 collected and deposited into the General Revenue Fund.
- 185 (14) PROHIBITION.—A fictitious name registered as provided
186 in this section may not contain the following words,
187 abbreviations, or designations:
- 188 (a) "Corporation," ~~or "incorporated,"~~ ~~or the abbreviations~~
189 "Corp.," or "Inc.," unless the person or business for which the
190 name is registered is incorporated or has obtained a certificate
191 of authority to transact business in this state pursuant to ~~part~~
192 ~~of~~ chapter 607 or chapter 617.
- 193 (b) "Limited liability company," "LLC," or "L.L.C.," unless
194 the person or business for which the name is registered is
195 organized as a limited liability company or has obtained a
196 certificate of authority to transact business in this state
197 pursuant to chapter 605.
- 198 (c) "Limited liability partnership," "LLP," or "L.L.P.,"
199 unless the person or business for which the name is registered
200 is organized as a limited liability partnership or has in effect
201 a statement of foreign qualification in this state pursuant to
202 ss. 620.81001-620.9902.
- 203 (d) "Limited partnership," "limited liability limited

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204 partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the
205 person or business for which the name is registered is organized
206 as a limited partnership or has obtained a certificate of
207 authority to transact business in this state pursuant to ss.
208 620.1101-620.2205.

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

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

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

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