

By the Committees on Rules; Governmental Oversight and Accountability; and 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; 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 reordered
20 and amended to 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 (c) ~~(a)~~ "Fictitious name" means any name under which a
26 person transacts business in this state, other than the person's
27 legal name.

28 (a) ~~(b)~~ "Business" means any enterprise or venture in which
29 a person sells, buys, exchanges, barter, deals, or represents

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30 the dealing in any thing or article of value, or renders
31 services for compensation.

32 (b)~~(e)~~ "Division" means the Division of Corporations of the
33 Department of State.

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, if~~
43 ~~a corporation, its federal employer's identification number and~~
44 ~~Florida incorporation or registration number.~~

45 4. If the registrant is a business entity that was required
46 to file incorporation or similar documents with its state of
47 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

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59 and the public as to the registrant ~~persons~~ so conducting
60 business.

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

64 (c) With respect to a general partnership that is not
65 registered with the division, its partners are the registrants
66 and not the partnership entity. With respect to 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 at the time the registration is filed.

70 (4) CANCELLATION AND REREGISTRATION CHANGE OF OWNERSHIP.—If
71 a registrant ceases to engage in business under a registered
72 fictitious name, such registrant the ownership of a business
73 registered under this section changes, the owner of record with
74 the division 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 or, with respect to a general
79 partnership that is not registered with the division, is in
80 connection with a transfer by a general partner of all or any
81 part of the general partner's partnership interest and, as a
82 result, a new person will engage in business under the
83 registered fictitious name, such new person may reregister the
84 name pursuant to subsection (3) at the same time as the
85 cancellation is filed.

86 (5) TERM.—

87 (a) A fictitious name registered under this section shall

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88 be valid for a period beginning on the date of registration or
89 reregistration and expiring on December 31 of the 5th calendar
90 year thereafter, counting the period from registration or
91 reregistration through December 31 of the year of registration
92 or reregistration as the first calendar year.

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

97 (6) RENEWAL.—

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

103 (b) In the ~~last~~ year that a ~~of the~~ registration is to
104 expire, the division shall notify the ~~owner or~~ registrant of the
105 fictitious name registration of the upcoming expiration of the
106 fictitious name no later than September 1. If the ~~owner or~~
107 registrant of the fictitious name has provided the division
108 ~~department~~ with an electronic mail address, such notice shall be
109 by electronic transmission. If the business is a general
110 partnership that is not registered with the division and, thus,
111 there is more than one registrant for the fictitious name, the
112 division need only notify one of the registrants.

113 (c) If a registrant ~~the owner~~ of the fictitious name
114 registration fails to timely file a renewal and pay the
115 appropriate processing fees on or before ~~prior to~~ December 31 of
116 the year of expiration, the fictitious name registration

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117 expires. The division shall remove any expired or canceled
118 fictitious name registration from its records and may purge such
119 registrations. Failure to receive the notice ~~statement~~ of
120 expiration renewal required by paragraph (b) shall not
121 constitute grounds for appeal of a registration's expiration or
122 removal from the division's records.

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

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

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

145 (9) PENALTIES.—

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146 (a) If a business fails to comply with this section,
147 neither the business nor the person or persons engaging in the
148 ~~its members, and those interested in doing such~~ business may not
149 maintain any action, suit, or proceeding in any court of this
150 state with respect to or on behalf of such business until this
151 section is complied with. An action, suit, or proceeding may not
152 be maintained in any court of this state by any successor or
153 assignee of such business on any right, claim, or demand arising
154 out of the transaction of business by such business in this
155 state until this section has been complied with.

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

164 (c) Any person who fails to comply with this section
165 commits a noncriminal violation as defined in s. 775.08
166 ~~misdemeanor of the second degree, punishable as provided in s.~~
167 ~~775.082 or~~ s. 775.083.

168 (10) POWERS OF DIVISION ~~DEPARTMENT~~.—The division ~~Department~~
169 ~~of State~~ is granted the power reasonably necessary to enable it
170 to administer this section efficiently and, to perform the
171 duties herein imposed upon it.

172 (11) FORMS.—Registration, cancellation, and renewal shall
173 be made on forms prescribed by the division ~~Department of State~~,
174 which may include the uniform business report, pursuant to s.

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175 606.06, as a means of satisfying the requirement of this
176 section.

177 (12) PROCESSING FEES.—The division ~~Department of State~~
178 shall charge and collect nonrefundable processing fees as
179 follows:

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

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

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

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

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

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

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

193 (a) "Corporation," ~~or~~ "incorporated," ~~or the abbreviations~~
194 "Corp.," or "Inc.," unless the person or business for which the
195 name is registered is incorporated or has obtained a certificate
196 of authority to transact business in this state pursuant to ~~part~~
197 ~~of~~ chapter 607 or chapter 617.

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

203 (c) "Limited liability partnership," "LLP," or "L.L.P.,"

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204 unless the person or business for which the name is registered
205 is registered as a limited liability partnership or has obtained
206 a certificate of authority to transact business in this state
207 pursuant to s. 620.9102.

208 (d) "Limited partnership," "limited liability limited
209 partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the
210 person or business for which the name is registered is organized
211 as a limited partnership or has obtained a certificate of
212 authority to transact business in this state pursuant to ss.
213 620.1101-620.2205.

214 (e) "Professional association," "P.A.," or "chartered,"
215 unless the person or business for which the name is registered
216 is organized as a professional corporation pursuant to chapter
217 621, or is organized as a professional corporation pursuant to a
218 similar law of another jurisdiction and has obtained a
219 certificate of authority to transact business in this state
220 pursuant to chapter 607.

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

229 (15) LEGAL DESIGNATION OF ENTITY.—Notwithstanding any other
230 ~~provision of~~ law to the contrary, a fictitious name registered
231 as provided in this section for a corporation, limited liability
232 company, limited liability partnership, or limited partnership

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233 is not required to contain the designation of the type of legal
234 entity in which the person or business is organized, including
235 the terms "corporation," "limited liability company," "limited
236 liability partnership," "limited partnership," or any
237 abbreviation or derivative thereof.

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