

CHAPTER 2017-47

Committee Substitute for Committee Substitute for House Bill No. 169

An act relating to fictitious name registration; amending s. 865.09, F.S.; defining the term “registrant”; revising the information required to register a fictitious name; revising requirements for a change in registration; revising provisions concerning the expiration of a registration; prohibiting a renewal of a registration if the registered fictitious name is prohibited by specified provisions; specifying additional forms of business organization that may not be required to register under certain circumstances; revising provisions concerning penalties for violations; specifying additional terms that may not be included in a fictitious name; providing an effective date.

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

Section 1. Section 865.09, Florida Statutes, is 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:

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

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

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

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

(3) REGISTRATION.—

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

1.(a) The name to be registered.

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

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

~~4. If the registrant is a business entity that was required to file incorporation or similar documents with its state of organization when it was organized, such entity must be registered with the division and in active status with the division; provide its Florida document registration number; and provide its federal employer identification number if the entity has such a number.~~

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

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

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

~~(c) With respect to a general partnership that is not registered with the division, its partners are the registrants and not the partnership entity. With respect to a general partnership that is registered with the division, the partnership is the registrant and it must be in active status with the division at the time the registration is filed.~~

~~(4) CANCELLATION AND REREGISTRATION CHANGE OF OWNERSHIP.—If a registrant ceases to engage in business under a registered fictitious name, such registrant the ownership of a business registered under this section changes, the owner of record with the division shall file a cancellation with the division and reregistration that meets the requirements set forth in subsection (3) within 30 days after the cessation occurs the occurrence of such change. If such cessation is in connection with a transfer of the business or, with respect to a general partnership that is not registered with the division, in connection with a transfer by a general partner of all or any part of the general partner's partnership interest and, as a result, a new person will engage in business under the registered fictitious name, such new person may reregister the name pursuant to subsection (3) at the same time as the cancellation is filed.~~

~~(5) TERM.—~~

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

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

(6) RENEWAL.—

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

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

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

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

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

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

(9) PENALTIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor June 2, 2017.

Filed in Office Secretary of State June 2, 2017.