

**CSFS – Bill to Revise 865.09**

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:

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

(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.

(c) “Division” means the Division of Corporations of the Department of State.

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

(a) The name to be registered.

(b) The mailing address of the business.

(c) The name and address of each owner and, if ~~a corporation~~ the owner is a corporation, partnership, limited liability company or other commercial entity that is actively organized or registered with the Department of State [or with another jurisdiction], its federal employer’s identification number and Florida incorporation or document registration number.

(d) Certification by 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 where the principal place of business of the applicant will be located.

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

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

(4) CHANGE OF OWNERSHIP.—If the ownership of a business registered under this section changes, the owner of record with the division shall file a cancellation and reregistration that meets the requirements set forth in subsection (3) within 30 days after the occurrence of such change.

(5) TERM.—A fictitious name registered under this section shall be valid for a period of 5 years and expires on December 31 of the 5th 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 of the registration, the division shall notify the owner or registrant of the expiration of the fictitious name. If the owner or registrant of the fictitious name has provided the department with an electronic mail address, such notice shall be by electronic transmission.

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

(d) All fictitious name registrations filed on or after \_\_\_\_\_, shall be governed by the provisions of this section and shall remain active on the record of the secretary of state for a period of five years. Such registered fictitious name filing shall expire at the end of the five-year period unless a renewal is filed under subsection 6 of this section. All active fictitious name registrations filed prior to \_\_\_\_\_ shall remain active on the record of the secretary of state until their currently scheduled expiration. At such expiration, if such registered fictitious name complies with this section, a renewal may be filed under subsection 6 of this section.

(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 commercial entity that is actively organized or registered with the 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 gives rise to 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, the business, its members, and those interested in doing such business may not maintain any action, suit, or proceeding in any court of this state 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’s fees and court costs necessitated by the noncomplying business.

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

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

(11) FORMS.—Registration, cancellation, and renewal shall be made on forms prescribed by the 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 Department of State shall charge and collect nonrefundable processing fees as follows:

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

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

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

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

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

(13) DEPOSIT OF FUNDS.—All funds required to be paid to the 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 words “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~~617, may not contain the words “Limited Partnership,” “Limited Liability Limited Partnership” or the abbreviation “LP” or “LLP” 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 Sections 620. through 620. , may not contain the words “Limited Liability Partnership” or the abbreviation “LLP” unless the person or business for which the name is registered is registered as a limited liability partnership and may not contain the words “Limited Liability Company” or the abbreviation “LLC” 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.

(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.