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CS/CS/HB 169

2017 Legislature

1
 2 An act relating to fictitious name registration;
 3 amending s. 865.09, F.S.; defining the term
 4 "registrant"; revising the information required to
 5 register a fictitious name; revising requirements for
 6 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 amended to
 20 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 (a) ~~(b)~~ "Business" means any enterprise or venture in which

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26 | a person sells, buys, exchanges, barters, deals, or represents
 27 | the dealing in any thing or article of value, or renders
 28 | services for compensation.

29 | (b)~~(e)~~ "Division" means the Division of Corporations of
 30 | the Department of State.

31 | (c)~~(a)~~ "Fictitious name" means any name under which a
 32 | person transacts business in this state, other than the person's
 33 | legal name.

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

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

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

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

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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, 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
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
94 period of 5 years beginning on January 1 of the year following
95 the prior registration expiration date and expiring ~~of 5 years~~
96 ~~and 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

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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
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.

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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 ~~re~~ 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.—

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

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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
 169 ~~Department of State~~ is granted the power reasonably necessary to
 170 enable it to administer this section efficiently and~~7~~ to perform
 171 the 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.
 175 606.06, as a means of satisfying the requirement of this

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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
 188 the division ~~Department of State~~ pursuant to this section shall
 189 be 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 ~~I~~ of chapter 607 or chapter 617.

198 (b) "Limited partnership," "limited liability limited
 199 partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the
 200 person or business for which the name is registered is organized

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201 as a limited partnership or has obtained a certificate of
 202 authority to transact business in this state pursuant to ss.
 203 620.1101-620.2205.

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

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

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

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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
230 | other ~~provision of~~ law to the contrary, a fictitious name
231 | registered as provided in this section for a corporation,
232 | limited liability company, limited liability partnership, or
233 | limited partnership is not required to contain the designation
234 | of the type of legal entity in which the person or business is
235 | organized, including the terms "corporation," "limited liability
236 | company," "limited liability partnership," "limited
237 | partnership," or any abbreviation or derivative thereof.

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