

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 8, 1998 Revised: _____

Subject: Fictitious Names

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Givens</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill prohibits persons, partnerships, limited liability companies, or corporations from using a fictitious name in the conduct of business with intent to misrepresent the geographic origin or location of such person or entity. Violators are guilty of a second degree misdemeanor and may not maintain any court action until compliance is made.

This bill amends section 865.09 of the Florida Statutes.

II. Present Situation:

The Fictitious Names Act (s. 865.09, F.S.) requires statewide public notice of the true identity of a business owner intending to transact business in this state under a name other than its legal name. Before beginning operations under the assumed name, the business owner must register with the Division of Corporations in the Department of State, and provide the legal name, mailing address of the business, Florida incorporation or registration number, and certification that the registered name has been advertised in the county where the business owner's principal place of business is located. Most applicants are sole proprietors who do not wish to use their legal names in a company name for marketing purposes, or corporations looking to market a line of business under a name other than the corporation's legal name. Presently, a fictitious name may not contain the words "corporation" or "incorporated," or their abbreviations, unless the applicant is incorporated in Florida.

Registration ensures that the public can tie the business activity to the legal entity. It does not convey any ownership interest in the fictitious name, nor does it reserve the name for the exclusive future use of that business. Fictitious name registration cannot interfere with rights to a

name if previously reserved by incorporation under ch. 607, F.S., relating to corporations, or ch. 617, F.S., relating to non-profit corporations.

Prior to 1991, fictitious names were registered with the clerk of court in the county where the principal place of business was located. In ch. 90-267, L.O.F., the Legislature required a statewide notice. According to the Division of Corporations, this change recognized the expanding scope of most business activity beyond county boundaries, making a county level notice less effective.

The statewide registration is valid for 5 years with a right of renewal for an additional 5 years. There is no regulation of the business activities that can be engaged in under the fictitious name, by virtue of the registration. It is a second degree misdemeanor to operate under a fictitious name without complying with the act. It is also a second degree misdemeanor to submit false information to the Department of State in any capacity.

A company's failure to register a fictitious name is forfeiture of the right of the business owner to proceed in court under the fictitious name. However legal documents entered into under the fictitious name are not voided if the business owner does not comply with the act. Failure to comply with the provisions of this section is deemed a second degree misdemeanor punishable by a term of imprisonment not to exceed 60 days or a fine not to exceed \$500.

III. Effect of Proposed Changes:

The effect of the bill is to prohibit the intentional use of a fictitious name by any person, partnership, limited liability company or corporation, to misrepresent the geographic origin or location of a business. The conduct prohibited in the bill would be a violation of the Fictitious Names Act, and violators would be guilty of a second degree misdemeanor and may not maintain any court action until compliance is made.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Companies doing business in Florida under a fictitious name would be required to comply with the naming restrictions in the bill.

The prospect for abuse of the Fictitious Names Act is reduced by prohibiting misrepresentation of the business location.

C. Government Sector Impact:

The Division of Corporations in the Department of State would be required to screen the content of fictitious names as a result of the bill.

VI. Technical Deficiencies:

The bill does not define what content in a fictitious name, or what conduct constitutes intentional misrepresentation of geographic origin or location.

VII. Related Issues:

Generally, a business may operate using a fictitious name, provided the intent behind use of the name is not to injure or carry out fraud on those dealing with the business. However, statutory regulations governing the use of such names have been enacted in the majority of states. Such statutory provisions usually are to be construed strictly, with their coverage applied to situations and facts clearly within the parameters of the statute. (See 57 Am. Jur. 2d *Name* ss. 65-67 (1988); Op. Fla. Att'y Gen., No. 057-283 (1957).)

VIII. Amendments:

None.