

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 1127

1 AN ACT TO CREATE THE FICTITIOUS BUSINESS NAME REGISTRATION
2 ACT; TO CREATE NEW SECTION 25-93-1, MISSISSIPPI CODE OF 1972, TO
3 ENACT A SHORT TITLE; TO CREATE NEW SECTION 25-93-3, MISSISSIPPI
4 CODE OF 1972, TO ESTABLISH A CENTRALIZED STATEWIDE SYSTEM FOR
5 VOLUNTARY REGISTRATION OF FICTITIOUS BUSINESS NAMES IN ORDER TO
6 PROVIDE THE PUBLIC WITH THE ACTUAL IDENTITIES OF PERSONS OR
7 ENTITIES DOING BUSINESS IN THIS STATE; TO CREATE NEW SECTION
8 25-93-5, MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE
9 NEW SECTION 25-93-7, MISSISSIPPI CODE OF 1972, TO PRESCRIBE
10 REQUIREMENTS FOR REGISTRATION; TO CREATE NEW SECTION 25-93-9,
11 MISSISSIPPI CODE OF 1972, TO PRESCRIBE REQUIREMENTS FOR AMENDMENTS
12 TO REGISTRATIONS; TO CREATE NEW SECTION 25-93-11, MISSISSIPPI CODE
13 OF 1972, TO PRESCRIBE REQUIREMENTS FOR THE TERM AND RENEWAL OF
14 REGISTRATIONS; TO CREATE NEW SECTION 25-93-13, MISSISSIPPI CODE OF
15 1972, TO PROVIDE THAT REGISTRATION UNDER THE ACT DOES NOT CONFER
16 EXCLUSIVITY OR PRESERVATION OF USE OF A NAME; TO CREATE NEW
17 SECTION 25-93-15, MISSISSIPPI CODE OF 1972, TO PRESCRIBE
18 REQUIREMENTS FOR WITHDRAWAL OR CANCELLATION OF REGISTRATION; TO
19 CREATE NEW SECTION 25-93-17, MISSISSIPPI CODE OF 1972, TO
20 PRESCRIBE REQUIREMENTS FOR REGISTRATION, AMENDMENTS TO
21 REGISTRATIONS, THE TERM AND RENEWAL OF REGISTRATIONS, AND
22 WITHDRAWAL OR CANCELLATION OF REGISTRATION; TO CREATE NEW SECTION
23 25-93-19, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CHANGE OF
24 OWNERSHIP; TO CREATE NEW SECTION 25-93-21, MISSISSIPPI CODE OF
25 1972, TO PRESCRIBE FEES UNDER THE ACT; TO CREATE NEW SECTION
26 25-93-23, MISSISSIPPI CODE OF 1972, TO RESTRICT THE USE OF THE
27 DESIGNATION OF CERTAIN BUSINESS FORMS; TO CREATE NEW SECTION
28 25-93-25, MISSISSIPPI CODE OF 1972, TO PRESCRIBE LIMITATIONS ON
29 THE ADOPTION OF CERTAIN FICTITIOUS BUSINESS NAMES; TO CREATE NEW
30 SECTION 25-93-27, MISSISSIPPI CODE OF 1972, TO REQUIRE PUBLIC
31 ACCESS TO RECORDS CREATED UNDER THE ACT; TO CREATE NEW SECTION
32 25-93-29, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE POWERS OF THE
33 SECRETARY OF STATE UNDER THE ACT; TO CREATE NEW SECTION 25-93-31,
34 MISSISSIPPI CODE OF 1972, TO ENACT PENALTIES FOR FRAUDULENT
35 FILINGS; AND FOR RELATED PURPOSES.

36 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

37 **SECTION 1.** The following shall be codified as Section
38 25-93-1, Mississippi Code of 1972:

39 25-93-1. **Short title.** This chapter may be cited as the
40 "Fictitious Business Name Registration Act."



41 **SECTION 2.** The following shall be codified as Section
42 25-93-3, Mississippi Code of 1972:

43 25-93-3. **Purpose.** The purpose of this chapter is to
44 establish a centralized, statewide system of voluntary
45 registration of fictitious business names being used in this state
46 in order to provide the public with the legal names of persons or
47 entities doing business under a fictitious name.

48 **SECTION 3.** The following shall be codified as Section
49 25-93-5, Mississippi Code of 1972:

50 25-93-5. **Definitions.** As used in this chapter:

51 (a) "Business" means any commercial or professional
52 activity.

53 (b) "Fictitious business name" means any name under
54 which an entity transacts business in this state, other than (i)
55 the entity's legal name, or (ii) a fictitious name adopted by a
56 foreign entity under Title 79, Mississippi Code of 1972, because
57 its legal name is unavailable.

58 (c) "Entity" means any corporation; limited liability
59 company; partnership; limited partnership; limited liability
60 partnership; sole proprietorship; firm; enterprise; franchise;
61 association; organization; holding company; self-employed
62 individual; joint-stock company; receivership; trust; other legal
63 entity or undertaking organized for economic gain; nonprofit
64 corporation; association or organization receiving public funds;
65 or other such entity.

66 **SECTION 4.** The following shall be codified as Section
67 25-93-7, Mississippi Code of 1972:

68 25-93-7. **Registration.** (1) An entity may apply to register
69 a fictitious business name by filing with the Secretary of State
70 the following information:

71 (a) The fictitious business name to be registered;

72 (b) The applicant's legal name and mailing address;



73 (c) Every street address or physical location where the
74 entity uses or will be using the fictitious business name to
75 transact business;

76 (d) If the applicant is a domestic corporation or
77 limited liability company, its Mississippi business identification
78 number;

79 (e) If the applicant is a foreign corporation or
80 limited liability company, the state or nation of its organization
81 and a copy of its certificate of authority to transact business in
82 Mississippi;

83 (f) A statement that the applicant is familiar with the
84 provisions of this chapter and understands that filing under this
85 section does not create any exclusive rights in or to the
86 fictitious business name; and

87 (g) Any other information the Secretary of State may
88 reasonably require by rule, including, without limitation, the
89 applicant's electronic mailing address, the address of the
90 entity's official Web site, if applicable, and the general nature
91 of the business conducted by the applicant.

92 (2) The applicant shall sign and verify the application.

93 (3) Upon compliance by the applicant with the requirements
94 of this section, the Secretary of State shall return to the
95 applicant a stamped copy of the approved registration application.

96 (4) The Secretary of State shall not refuse registration of
97 a fictitious business name on the grounds that the name is
98 indistinguishable from a previously registered fictitious business
99 name, registered trademark, or legal name of an entity required by
100 law to register with the Secretary of State.

101 (5) Only one (1) fictitious business name may be registered
102 per application submitted under the provisions of this section.

103 **SECTION 5.** The following shall be codified as Section
104 25-93-9, Mississippi Code of 1972:



105 25-93-9. **Amendments to registration.** The registrant of a
106 fictitious business name shall, within thirty (30) days of a
107 material change in any of the information listed in Section
108 25-93-7(1), file with the Secretary of State an amendment of
109 fictitious business name registration. The amendment shall set
110 forth all information that would be required in an original
111 application for registration of a fictitious business name, and
112 the amendment shall be executed in the same manner as an original
113 application.

114 **SECTION 6.** The following shall be codified as Section
115 25-93-11, Mississippi Code of 1972:

116 25-93-11. **Term and renewal.** (1) The registration period
117 for a fictitious business name registered under this chapter shall
118 be five (5) years; registration shall expire on December 31 of the
119 year in which the fifth anniversary of registration occurs.

120 (2) Renewal of fictitious business name registrations:

121 (a) Renewal of a fictitious business name registration
122 may be made on or between January 1 and December 31 of the
123 expiration year. Upon timely filing of a renewal statement, the
124 effectiveness of the registration shall continue for five (5)
125 years as provided in this section.

126 (b) If the registration is not timely renewed on or
127 before December 31 of the year of expiration, the registration
128 shall expire. The Secretary of State shall remove any expired or
129 canceled registration from its records and may purge such
130 registrations.

131 **SECTION 7.** The following shall be codified as Section
132 25-93-13, Mississippi Code of 1972:

133 25-93-13. **Effect of registration.** Notwithstanding the
134 provisions of any other law, registration of a fictitious business
135 name under this chapter is for public notice only and gives rise
136 to no presumption of the registrant's exclusive rights to own or
137 use the fictitious business name registered, nor does it affect



138 trademark, service mark, trade name, or other name rights
139 previously acquired by others in the same or similar name.
140 Registration under this chapter does not preserve a fictitious
141 business name against future use or registration by others. The
142 issuance of a registration under this chapter shall not constitute
143 due organization or authority to transact business in this state.

144 **SECTION 8.** The following shall be codified as Section
145 25-93-15, Mississippi Code of 1972:

146 25-93-15. **Withdrawal of registration.** The registrant of a
147 fictitious business name may withdraw its registration by
148 delivering to the Secretary of State a statement containing the
149 following:

150 (a) The legal name of the entity utilizing the
151 fictitious business name;

152 (b) The fictitious business name with respect to which
153 the statement of withdrawal relates;

154 (c) That the entity will no longer transact business in
155 this state under the fictitious business name;

156 (d) An acknowledgement that the applicant understands
157 the fictitious business name registration will no longer be
158 effective upon the filing of the statement of withdrawal; and

159 (e) The signature of the withdrawing registrant.

160 **SECTION 9.** The following shall be codified as Section
161 25-93-17, Mississippi Code of 1972:

162 25-93-17. **Cancellation of registration.** The Secretary of
163 State shall cancel a fictitious business name registration if:

164 (a) The Secretary of State receives a voluntary
165 withdrawal of registration from the registrant or the assignee of
166 record;

167 (b) The registration is not renewed in accordance with
168 this chapter;

169 (c) A court of competent jurisdiction orders the
170 cancellation on any grounds; or



171 (d) The registration was obtained fraudulently by
172 containing false or misleading information.

173 **SECTION 10.** The following shall be codified as Section
174 25-93-19, Mississippi Code of 1972:

175 25-93-19. **Change of ownership.** Any fictitious business name
176 registered under this chapter may be assigned by filing a duly
177 executed written instrument with the Secretary of State.

178 **SECTION 11.** The following shall be codified as Section
179 25-93-21, Mississippi Code of 1972:

180 25-93-21. **Forms and fees.** (1) All filings required under
181 this chapter shall be made on forms prescribed by the Secretary of
182 State.

183 (2) Subject to the provisions of subsection (3), the
184 Secretary of State shall charge and collect nonrefundable
185 processing fees as follows:

186 (a) For registration or renewal of a fictitious
187 business name, Twenty-five Dollars (\$25.00).

188 (b) For withdrawal, cancellation, amendment, or
189 assignment of a fictitious business name, Twenty-five Dollars
190 (\$25.00).

191 (c) For furnishing a certified copy of a fictitious
192 business name document, Ten Dollars (\$10.00).

193 (3) Entities required by law to file annual reports with the
194 Secretary of State shall not be charged a separate fee for
195 registration or renewal of a fictitious business name, provided
196 that the application for registration or renewal is filed along
197 with the entity's annual report.

198 (4) The Secretary of State shall prescribe by rule the means
199 of electronic filing of documents required under this chapter.

200 **SECTION 12.** The following shall be codified as Section
201 25-93-23, Mississippi Code of 1972:

202 25-93-23. **Legal designation of entity.** Notwithstanding any
203 other provision of law to the contrary, a fictitious business name



204 registered as provided in this chapter is not required to contain
205 within that name a designation reflecting the applicant's type of
206 legal entity, including the terms "corporation," "limited
207 liability company," "limited liability partnership," "limited
208 partnership," or any abbreviations or derivatives thereof.

209 **SECTION 13.** The following shall be codified as Section
210 25-93-25, Mississippi Code of 1972:

211 25-93-25. **Limitations on adoption of certain fictitious**

212 **business names.** (1) The Secretary of State shall refuse
213 registration of a fictitious business name, which, in the
214 Secretary of State's sole discretion, is potentially misleading,
215 or which includes any of the following terms:

216 (a) "Corporation," "Corp.," "Incorporated," or "Inc.,"
217 unless the applicant is a corporation organized or qualified to do
218 business pursuant to the laws of this state;

219 (b) "Limited Liability Company," "Limited Company" or
220 the abbreviation "L.L.C.," "L.C.," "LLC," or "LC," unless the
221 applicant is a limited liability company organized or registered
222 to do business pursuant to the laws of this state;

223 (c) "Business Trust" or the abbreviation "B.T." or
224 "BT," unless the applicant is a business trust organized or
225 registered to do business pursuant to the laws of this state;

226 (d) "Professional Corporation" or the abbreviation
227 "Prof. Corp.," "P.C.," or "PC" or the word "Chartered" or the
228 abbreviation "Chtd.," unless the applicant is a professional
229 corporation organized to do business pursuant to the laws of this
230 state;

231 (e) "Professional Association," "Professional
232 Organization," or the abbreviation "Prof. Ass'n" or "Prof. Org.,"
233 unless the applicant is a professional association organized to do
234 business pursuant to the laws of this state;

235 (f) "Limited" or the abbreviation "Ltd.," unless the
236 applicant is a corporation, limited liability company, registered



237 limited liability partnership, limited partnership, or
238 professional corporation organized, qualified, or registered to do
239 business pursuant to the laws of this state;

240 (g) Words not permitted to be used in any business name
241 without governmental consent, unless the applicant provides to the
242 Secretary of State written evidence of such consent.

243 (2) Notwithstanding the other provisions of this section,
244 the Secretary of State may allow registration of a fictitious
245 business name which contains a prohibited term if, in the
246 Secretary of State's sole discretion, the term is not misleading.

247 **SECTION 14.** The following shall be codified as Section
248 25-93-27, Mississippi Code of 1972:

249 25-93-27. **Public examination of records.** The Secretary of
250 State shall keep for public examination a record of all fictitious
251 business names registered or renewed under the provisions of this
252 chapter.

253 **SECTION 15.** The following shall be codified as Section
254 25-93-29, Mississippi Code of 1972:

255 25-93-29. **Powers of Secretary of State.** The Secretary of
256 State is granted the power reasonably necessary to enable it to
257 administer this chapter efficiently, to perform the duties herein
258 imposed upon it, and to adopt reasonable rules necessary to carry
259 out its duties and functions under this chapter.

260 **SECTION 16.** The following shall be codified as Section
261 25-93-31, Mississippi Code of 1972:

262 25-93-31. **Penalty for fraudulent filings.** Any person who
263 shall knowingly and willfully procure the registration of a
264 fictitious business name or apply for registration of a fictitious
265 business name under the provisions of this chapter by knowingly
266 making any false or fraudulent representation or declaration,
267 orally or in writing, or by any other fraudulent means, is guilty
268 of a misdemeanor and, upon conviction, shall be punished by a fine
269 of not more than Five Hundred Dollars (\$500.00).



270 **SECTION 17.** This act shall take effect and be in force from
271 and after July 1, 2010.

