MISSISSIPPI LEGISLATURE REGULAR SESSION 2010

By: Senator(s) Fillingane

To: Judiciary, Division B

SENATE BILL NO. 2003

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The fictitious business name to be registered;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Renewal of fictitious business name registrations:

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

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

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

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

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

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

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

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

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

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

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

(e) The signature of the withdrawing registrant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25-93-25. **Limitations on adoption of certain fictitious business names.** (1) The Secretary of State shall refuse registration of a fictitious business name, which, in the Secretary of State's sole discretion, is potentially misleading, or which includes any of the following terms:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ST: Trade names; create the Fictitious Business Name Registration Act.