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Summary of the Fictitious Business Name Registration Act
Miss. Code Ann. § 25-93-1 et seq.

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The Mississippi Legislature recently adopted the Fictitious Business Name Registration Act, which became effective on July 1, 2011 (the “Act”). This Act will benefit both businesses and customers by allowing businesses to register their fictitious names, as well as ownership information for the business, with the Business Services Division of the Secretary of State’s Office for a nominal fee (\$25). The Act puts Mississippi in line with 45 other states that allow or require registration of fictitious names.

What is a fictitious name?

Many individuals, corporations and other types of legal entities choose to operate in public under a fictitious name which is a name that is different from their legal name (i.e., the name shown on their birth certificate or in their articles of incorporation or certificate of formation, etc.). A fictitious name may also be referred to as an alias, a trade name, assumed name, “dba” (or “d/b/a”) name or “doing business as” name.

Examples of fictitious names and their legal owners are:

- Jackson Bakery, owned by Susan Smith (an individual as a sole proprietor)
- Susan’s Bakery, owned by Susan Smith (an individual as a sole proprietor)
- Quality Cleaners, owned by XYZ Corporation
- Mississippi Storage Company, owned by ABC, LLC

Fictitious names are not just used by small, family-owned businesses. Large companies also use them. For example, AT&T Mississippi is actually a “dba” name. The legal name of this company is BellSouth Telecommunications, Inc. d/b/a AT&T Southeast and d/b/a AT&T Mississippi.

Why should a business register?

Though registration under the Act is completely voluntary, businesses might want to register their name for a number of reasons:

- Registering the name can serve to put other businesses on notice that a particular name is already in use. For example, anyone discovering that Susan Smith is using the name Jackson Bakery might be less likely to adopt a confusingly similar name.
 - **Note:** However, the Act specifically states that registration does **not** grant the registrant the exclusive right to the use of the registered name.
- Similarly, should a trademark dispute arise between Susan Smith and another business, Ms Smith's registration could potentially add weight to her claim that she began using the "Jackson Bakery" mark in commerce prior to the other business' use of its claimed name.
- Lastly, should Ms. Smith seek a loan or want to open a separate bank account for her business, she might be required to register her fictitious name to comply with the bank's lending guidelines. With the adoption of the Act, Mississippi banks are likely to require businesses to register their fictitious names prior to obtaining a loan or opening an account in order to prevent fraudulent activity.

How will consumers benefit from the Act?

- The Act requires the Secretary of State to provide on its website a searchable online database of all registered fictitious names. Since the Act provides consumers with a free, simple way to find out the identity and location of the true owner of a business that is using a fictitious name, this should enable consumers to make better decisions about with whom they deal and to help customers identify the liable party if a business transaction goes bad.
- Likewise, if consumers do not find a business's name in the fictitious names database, they are more likely to be more cautious in dealing with such business and therefore less likely to become a victim of fraudulent activity.

What is the purpose of the Act?

The stated purpose of the Act 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."

How long does the registration last?

Registration of a fictitious name is for a term of five (5) years and is renewable indefinitely.

How do I register and what kind of information must I provide? Can I register on-line?

Online registration is not yet available. However, you can obtain a blank copy of the registration form online which you can print out by visiting the Secretary of State's website at <http://www.sos.gov>, clicking the "Business Services" tab, then "Fees and Forms," and finally "Other Filings." You will be asked to provide the legal name of your business; your Mississippi business

ID number (for corporations and LLCs formed in Mississippi) or copy of your certificate of authority to do business in Mississippi (for businesses formed out of state); your business' mailing address; the street addresses of any businesses using your fictitious name; a short description of the nature of your business; and your business e-mail address, if any. The fee for registration is \$25. The form, fee and other materials requested should be filed with the Business Services Division.

Do I need to provide the address of all my locations? What if I add or change a location? Do I have to re-register?

You should provide the street address of any location using the fictitious name that you are registering. In the event that you add or change a location, you should file an amendment of fictitious business name registration using the appropriate form on the Secretary of State's website.

I don't have a street address for my business; I have a P.O. Box or operate out of my vehicle, etc. How do I provide my location?

Our office recommends that you provide the street address of the location where you conduct the majority of your business, or, in the case of a vehicle, the location where it is usually stored.

If I register my fictitious name, does this mean that no one else can register the same name in the state or use the same name in the state?

No. The Act specifically states that registration of a fictitious business name does not give the registrant the exclusive right to use the name.

There is already a fictitious name registered in the database that is identical or similar to a name my business is currently using, but we are unrelated. Can I still register my fictitious name?

Yes, you can. Per the Act, our office may not reject an application for registration of a fictitious business name merely because the name to be registered is similar or identical to an existing registered name. There is no limit to the number of entities which may register the same fictitious name.

Same question as above, but the name is in the trademarks database, not the fictitious business name database. Can I still register my fictitious business name?

Yes, you can. Our office may not reject an application for registration of a fictitious business name merely because the name to be registered is similar to an existing registered Mississippi trademark. However, our office recommends that if you are confronted with this circumstance you contact an attorney to determine your rights to the name.

Where is the fictitious business name database located on the Secretary of State's website? Can I search by the name of the owner? Just the fictitious business name? Both?

The fictitious business name database is included as part of the corporation and other entity names database, which is accessible through the Business Services section of the Secretary of State's

website. Just type the fictitious name or legal name into the “Search Business Entities” search box on the website and it will direct you to the company/entity that is using that name.

I have already obtained a federal trademark and/or a Mississippi trademark for my business' name. Is there any reason I should also register my fictitious business name?

A business still might want to register its fictitious business name in this situation to provide the public an easy way to determine the ownership of its business.