

#44

2/25/69

Memorandum 69-45

Subject: Study 44 - Fictitious Business Names

The attached tentative recommendation reflects policy decisions made at the February meeting, as well as a rather thorough nonsubstantive revision of the preliminary part of the recommendation.

Substantively, the statute now provides for publication of only essential information, the number of publications has been reduced to one, and no publication is required at the time of the five-year renewal if the published information would remain the same as that previously published. Posting has been eliminated, as well as the requirement of filing a certified copy of the fictitious business name statement together with a seller's application for a sales tax permit under Revenue and Taxation Code Section 6066. Tangentially, with respect to notice-giving procedures, the county clerk is now authorized to furnish summaries of fictitious business name information. He is further authorized to charge a fee at least sufficient to cover the cost of this service.

With respect to persons covered, the statute retains the requirement that the person "regularly transacts business in this state for a profit." Moreover, new Section 17904 expressly excludes medical partnerships authorized to practice under Section 2393 of the Business and Professions Code, as well as law partnerships. The former exclusion appears fully justified inasmuch as these medical partnerships are required to obtain a permit to operate under a fictitious name from the Board of Medical Examiners and the permit must be registered with the clerk in the county where the physicians practice. On the other hand, law partnerships, while not permitted to practice under a "false, misleading, assumed or

trade name," are not required to register their partnerships in the same manner as medical partnerships. Thus, if the purpose of the statutory procedures is to provide a ready source of information, it should be equally applicable to law partnerships. It should be noted that chiropractors, dentists, optometrists, landscape architects, and morticians, all appear to have similar restrictions as to the use of a misleading or fictitious name while not being required to register at a readily available source. In short, it would be somewhat difficult to distinguish law partnerships from these latter groups, yet the staff believes that the exemptions should not be carried so far. It would, of course, be simplest and perhaps most desirable to make no exceptions whatever and the Commission may wish to reconsider this issue.

You will recall that, at the February meeting, it was tentatively decided to simply authorize rather than require the filing of an affidavit of publication, subject to an inquiry to the county clerks regarding the inconvenience of a second filing. A letter from Mr. R. B. James of the County Clerks Association responding to this question is attached as Exhibit I. You will note that he raises some other points regarding publication prior to filing but he does inform us that a provision for subsequent, discretionary filing of an affidavit of publication would not be burdensome to the county clerks. Accordingly, such a provision is set forth in subdivision (d) of Section 17915.

At the March meeting, we plan to consider and discuss each section of the statute in order that they may be drafted in final form, if possible, for the April meeting.

Respectfully submitted,

Jack I. Horton  
Associate Counsel



## CLERK OF SAN DIEGO COUNTY

R. B. JAMES, COUNTY CLERK  
EX-OFFICIO CLERK SUPERIOR COURT  
220 W. BROADWAY  
SAN DIEGO, CALIFORNIA 92101

February 14, 1969

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford University  
Stanford, California 94305

Dear Mr. DeMouilly:

There were a number of reasons why I suggested that the affidavit of publication be filed at the time that the certificate was placed on record. The results of our periodic analyses of fictitious firm name filings indicated that a substantial percentage of the certificates had never been published. A special questionnaire was sent to those individuals who had filed certificates without showing evidence of publication. Some responded that they had published but had failed to file an affidavit with us. Some indicated that they had filed the certificate but never had actually gone into business. And the balance either did not respond or the letters were returned undelivered. The group that indicated that they had published but not filed their affidavit were requested to do so, but we have had very little results so probably they had not published either.

If the affidavit was filed at the time that the certificate was placed with us we would then be assured that the cycle had been completed and also that it was not a frivolous filing. With the volume of paperwork that we handle, the second filing of an affidavit is not too significant an expense, but I feel that an affidavit is necessary if there is going to be a provision for publication. It would also seem to me that if the law is going to require publication and the posting of evidence of filing in the place of business, that we should not be held responsible for placing that evidence in the hands of the individual without proof that the complete law had been complied with. As it stands today, we are carrying on the records large volumes of filings of fictitious firm names that are invalid because of no publication. If the affidavit had been filed at the time of the certificate, this would not be true.

I would picture that we would develop a form in the Office of the County Clerk, with a portion that could be perforated and

Mr. John H. DeMouilly

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at the time of filing it could be removed for posting in the individual's place of business, giving evidence that the statute had been complied with, including any required publication. This could not be done if we were unaware of the fact of publication or that publication had been delayed.

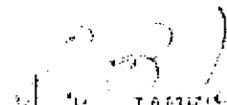
To answer your questions more to the point, an affidavit of publication requires an entry on the record of the filing and a filing procedure. The requirement of filing an affidavit of publication, if dispensed with, would perpetuate the present problem of incomplete filings; and the only suggestion that I have, assuming that publication would take place after the certificate was filed, would be that the County Clerk would issue a certificate for posting in the place of business upon receipt of that affidavit showing adequate publication.

Legal newspapers have little to fear from the County Clerk. If they are qualified to accept the responsibility of publishing legal notices, then they should be responsible for the filing of an adequate affidavit. Newspapers other than legal have always felt free to call this office for information regarding time of publication and the form of evidence. In addition to this, on the bottom of every certificate of fictitious firm name form we have printed the instructions for publication and any affidavit that indicates that they have complied with this portion of the statute has been accepted.

It just makes good sense to me to wind the whole thing up in one visit to the Office of the County Clerk and, in my opinion, the newspapers would benefit by this prerequisite. I certainly am not adamant, or would I voice any objection other than expressed here, to whatever is decided by the Commission relative to this part of the problem, but I do feel that we would have a cleaner record if our proposal is acceptable.

Again, I want to thank you for your consideration.

Sincerely

  
R. B. JAMES, Chairman  
Development Committee  
County Clerks Association

RBJ:cn  
cc: William G. Sharp

STATE OF CALIFORNIA  
CALIFORNIA LAW  
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

FICTITIOUS BUSINESS NAMES

REVISED STAFF DRAFT

California Law Revision Commission  
Law School  
Stanford University  
Stanford, California 94305

**WARNING:** This tentative recommendation has been prepared by the staff of the Law Revision Commission to effectuate the Commission's tentative decision that the publication requirement of the fictitious business name statute be modified and the statute be otherwise revised. The draft has not been considered by the Commission and does not reflect the views of the Commission.

This tentative recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted. They are cast in this form because their primary purpose is to undertake to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

#### NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

TENTATIVE RECOMMENDATION OF THE CALIFORNIA  
LAW REVISION COMMISSION

relating to

FICTITIOUS BUSINESS NAMES

BACKGROUND

Since its enactment in 1872, the California Civil Code has contained provisions regulating the use of "fictitious" names<sup>1</sup> for business purposes. Although the filing and publication requirements imposed by the so-called "fictitious name statute"--Civil Code Sections 2466-2471--have undergone minor changes over the years, the essential features of the system have endured for almost a century.

The statute requires every person<sup>2</sup> or partnership transacting

<sup>1</sup> A "fictitious" name is one that does not include the names of all the partners or the name of the individual owner of the business. A name is not "fictitious" if it includes the surname of each partner or of the individual owner. See *Flora v. Hankins*, 204 Cal. 351, 268 Pac. 331 (1928)(partners doing business under the name "Flora & Mahedy"); *Pendleton v. Cline*, 85 Cal. 142, 24 Pac. 659 (1890)(partners doing business under name "Pendleton & Williams"); *Kohler v. Stephenson*, 39 Cal. App. 374, 178 Pac. 970 (1919)(individual doing business as "Kohler Steam Laundry"). The cases are not completely consistent, but it appears that a name is not a fictitious name merely because it includes the word "company." Compare *Vagin v. Brown*, 63 Cal. App.2d 504, 146 P.2d 923 (1944)(individual doing business as "Vagin Packing Company" is not using a fictitious name); with *Andrews v. Glick*, 205 Cal. 699, 272 Pac. 587 (1928)("Andrews-Cordano Plumbing Company"); *Collection Service Corp. v. Conlin*, 98 Cal. App. 686, 277 Pac. 749 (1929)("Alles Printing Company"). See *Witkin*, 3 Summary of California Law 2265 (1960).

<sup>2</sup> The term "person" includes a corporation doing business under a name other than the one set forth in its articles of incorporation. *Berg Metals Corp. v. Wilson*, 170 Cal. App.2d 559, 339 P.2d 869 (1959). The statute does not apply to foreign commercial or banking partnerships established and transacting business outside the United States. Civil Code § 2467. Nor does it apply to persons not maintaining a place of business in this state. *Moon v. Martin*, 185 Cal. 361, 197 Pac. 77 (1921).

business in a fictitious name, or a designation not showing the names of the persons interested in the business, to file a certificate with the clerk of the county in which the principal place of business is located and subsequently to publish the certificate in a newspaper in that county once a week for four successive weeks. The certificate must show the names and residences of the persons transacting business in the fictitious name. A new certificate must be filed and published on each change of membership in the firm. If a person fails to file and publish the certificate required by the statute, neither he nor his assignees may "maintain" an action on any contract made or any transaction had in the fictitious name until the certificate has been filed and published. The "plea in abatement" thus afforded to the defendant

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<sup>3</sup> Lack of compliance merely abates the action; filing and publication pending trial is sufficient. *Radneck v. Southern Calif. Metal & Rubber Co.*, 184 Cal. 274, 193 Pac. 775 (1920); *Kadota Fig Assn. v. Case-Swayne Co.*, 73 Cal. App.2d 796, 167 P.2d 518 (1946). If the defense is upheld and the action abated, the judgment for the defendant is not res judicata in a subsequent action on the same cause of action. *Folden v. Lobrovich*, 153 Cal. App.2d 32, 314 P.2d 56 (1957). See also Civil Code Section 2468 as amended by Cal. Stats. 1967, Ch. 257, permitting filing and publication by a trustee in bankruptcy, guardian, conservator, executor, or administrator for the purpose of maintaining an action to recover any sums due the bankrupt, incompetent, or deceased person or partnership that should have filed and published the certificate but failed to do so.

<sup>4</sup> The defense of noncompliance is waived if the defendant fails to raise it. *Bryant v. Wellbanks*, 88 Cal. App. 144, 263 Pac. 332 (1927). Moreover, the trial judge has discretion to refuse to permit amendment of the defendant's pleading to raise the defense. *Stewart v. San Fernando Ref. Co.*, 22 Cal. App.2d 661, 71 P.2d 1118 (1937).

in such an action is the only sanction or incentive for complying with the statute.<sup>5</sup>

The fictitious name statute does not inhibit adoption of business or trade names, nor does it prevent use of duplicate or deceptively similar trade names. Rather, the courts uniformly have said that the single purpose of the statute is to prevent fraud or deception in commerce by providing sources of information--the certificate on file in the county clerk's office and, to a limited and transient extent, the newspaper publication--from which persons can learn with whom they are dealing.<sup>6</sup>

After assessing the views of interested persons and organizations, the Commission has concluded that, admitting its obvious shortcomings, the fictitious name statute continues to serve a useful purpose. Suggestions that the statute be repealed, on analysis, are based on the

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<sup>5</sup> Nothing precludes entering into contracts and transactions in the fictitious name; the sanction is limited to maintaining actions on such contracts or transactions. See note 3, *supra*. The sanction does not apply to tort actions. *Ralph v. Lockwood*, 61 Cal. 155 (1882). *Thompson v. Byers*, 116 Cal. App. 214, 2 P.2d 496 (1931).

Compliance with the statute is not a prerequisite to obtaining local business or other licenses in the fictitious name, nor in general is such compliance required to conduct in a fictitious name one of the businesses or professions licensed by the state. However, compliance is necessary to obtain a license as a real estate broker or salesman (Business and Professions Code Section 10159.5), mineral, oil, and gas broker or salesman (Business and Professions Code Section 10522.5), or check seller and cashier (Financial Code Section 12300.2). See also Business and Professions Code Section 7540 (private investigators, private patrol operators, insurance adjusters, and repossessioners must comply with the statute before conducting business under a fictitious name).

<sup>6</sup> See *Andrews v. Glick*, 205 Cal. 699, 272 Pac. 587 (1928); *Hixon v. Boren*, 144 Cal. App.2d 547, 301 P.2d 615 (1956); *Bank of America v. National Funding Corp.*, 45 Cal. App.2d 320, 114 P.2d 49 (1941). See also *Witkin*, 3 Summary of California Law 2264 (1960) ("The purpose of the requirement is to make a public record of the individual members of the firm for the benefit of those who deal with them.")

ineffectiveness and awkwardness of the existing provisions rather than on any question as to the desirability of a ready source of information concerning the realities obscured by business or trade names. The Commission believes that a thorough revision and streamlining of the statute can restore its effectiveness and enable it again to serve the purpose for which it originally was enacted.

#### RECOMMENDATIONS

##### Persons subject to the statute

The existing statute does not apply to all persons doing business in California under a fictitious name. Civil Code Section 2467 exempts commercial and banking partnerships established and transacting business in a place without the United States. The courts also have construed the filing requirements of the act to exempt any person who does not maintain a place of business within this state.<sup>7</sup>

The exemption for "foreign" commercial and banking partnerships should be eliminated. The exemption was provided in 1872 and has remained in the code with only a minor modification in 1873. The reference to banking partnerships is now obsolete as only a corporation may carry on the business of banking in California.<sup>8</sup> Foreign commercial partnerships should be required to comply with the statute. Persons in

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<sup>7</sup> See Moon v. Martin, 185 Cal. 361, 197 Pac. 77 (1921).

<sup>8</sup> Fin. Code § 102.

California normally would have greater difficulty in obtaining information concerning foreign partnerships than in obtaining information concerning local business enterprises. Since both foreign and domestic enterprises would be treated equally, there would be no discrimination against foreign commerce. The exemption originally was based on a similar provision of New York law which has since been repealed.<sup>9</sup>

Coverage of the statute should be limited to those persons who regularly do business in California under a fictitious business name but should be extended to all such persons, even though they may have no established places of business within the state. The need for information concerning the identity of a person who does business in California but does not have an established place of business in California seems at least as great as the need for information concerning the identity of a person doing business from a fixed location within the state.

On the other hand, existing provisions in the Business and Professions Code concerning use of fictitious names by physicians obviate the need to include them within the terms of the general fictitious name statute, and a special exception for physicians should be made. Similarly, attorneys practicing in California are registered with the State Bar and are specifically prohibited from using any false, misleading, assumed, or trade name. It appears therefore that the purpose of the fictitious name statute will be fully achieved without requiring law partnerships to file statements, and an exception for them should also be made.

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<sup>9</sup> See Section 2467 in 2 Raymond & Burch, Cal. Civ. Code Annot. 109 (1872); compare 3 Rev. Stat. of N.Y. (Banks and Brothers 5 ed.) 918 with N.Y. Penal Code Section 440.

### Fictitious business name statements

Every person covered by the statute should be required to file a fictitious business name statement within 40 days after he begins regularly to transact business in this state under a fictitious business name. The statement should include all the information required by existing law and, in addition, the address of the principal place of business of the person filing the statement. Although not presently required by the statute, the address of the principal place of business is customarily included in a fictitious name certificate.

### Place of filing of statements

A person required to comply with the statute should continue to file his statement in the office of the county clerk of the county in which he has his principal place of business in this state or, in the absence of such a principal place of business, in the office of the county clerk of Sacramento county.

### Publication requirement

Since 1872, each person filing a fictitious name certificate has been required to publish the certificate in a newspaper once a week for four successive weeks. A new publication is required each time the membership of a partnership changes. A typical minimum charge for the required publication is \$18 although in some cases the cost of publication has been more than \$200.

The publication requirement no doubt served a useful purpose when it was first imposed in 1872. In that era, there were fewer newspapers and the notices were published in the local papers that were read by the residents of the locality. Even today in many parts of the state, a

local community is served by a single newspaper, and publication can provide notice to the residents of that community. Nevertheless, there is an increasing concentration of both population and business in the large urban centers of the state. For example, more than half the fictitious name certificates published--approximately 20,000 certificates every year--are published in Los Angeles County. And most of those fictitious name certificates are published in legal newspapers rather than those read by the general public. In these urban centers the theory that newspaper publication effectuates the purposes of the statute by adding to the body of community knowledge concerning businesses and their ownership may be subject to question.

A survey made by the Commission in 1965 disclosed that 42 states had statutes regulating the use of fictitious business or trade names. Thirty-three states did not require publication in a newspaper. Of the nine remaining states, California, Florida, Montana, and Oklahoma required publication four times; Georgia, Minnesota, and Pennsylvania required publication twice; and Nebraska and North Dakota required one publication. At least two states, New York and South Dakota, once required publication but have eliminated this requirement. Investigation disclosed that the register maintained by the county clerk, rather than the newspaper publication, is the source most frequently used by persons who need information concerning businesses operating in a fictitious business name.

The Commission has concluded that newspaper publication of a fictitious business name statement can serve a useful purpose if the form in which the statement is published is improved and the publication of useless material avoided. However, the Commission believes that, in view of the inherent shortcomings of publication, it would be desirable to authorize

another notice-giving procedure. Accordingly:

(1) The county clerk should be authorized to furnish to any person who so requests daily or less frequent summaries or compilations of filings under the statute. Thus, where this procedure is adopted, any interested person can secure from one source complete and current information concerning all filings within the county. A somewhat similar provision for the furnishing of compilations of financing statements is found in Section 9407 of the Commercial Code. The person making the request should, of course, be required to reimburse the county clerk for the cost of furnishing this information.

(2) The fictitious business name information should be published in a more useful form and useless material should not be published. The information to be published should include the fictitious business name, the address of the principal place of business, and the name of the individual or corporation or the names of the partners doing business under the fictitious name. Publication should accompany each new filing where the information required to be published is changed. The expiration of the statement upon a change in circumstances is discussed below.

The residence addresses of the individual or partners should not be included in the published information. The slight value this information might have does not justify the cost of publication. The addresses can easily be obtained, by reference to the business name statement filed in the office of the county clerk. In this respect, the information published will be comparable to the information required to be included in a statement filed by a domestic corporation pursuant to Corporations Code Section 3301, which includes the names, but not the residence addresses, of the principal officers of the corporation.

In view of the improved form of publication recommended above, the number of publications should be reduced from four to one.

Expiration of statement

To ensure that the information on file with the county clerk is kept current and to provide a means whereby the county clerk can dispose of obsolete statements in his files:

(1) The fictitious business name statement should be renewed at least once every five years. This retains the substance of existing law.

(2) The statement should expire and a refiling be required whenever any change occurs that renders the facts set forth in the statement inaccurate. The only exception to the latter rule should be that a change in the residence address of an individual or general partner should not cause the statement to expire if the new residence address remains within the county in which the statement is filed. Under existing law, a new certificate must be filed only when there is a change in the members of a partnership.

Maintenance of fictitious business name records

The statute should continue to require that the county clerk maintain indices of fictitious business name statements that will permit determination of whether: (1) any business using a fictitious business name has on file a fictitious business name statement; (2) any individual, general partner, or corporation is listed in any fictitious business name statement; (3) a statement of abandonment of the use of a fictitious business name is on file.<sup>10</sup>

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<sup>10</sup> Civil Code Section 2470 presently requires each county clerk to keep a "register" of certain of the information contained in the fictitious name certificates. This requirement would be superseded by the requirements recommended in the text.

The statute should set forth only the function of these indices. This will permit each county clerk to use the system best suited to the resources and needs of his county. Generally, in the smaller counties relatively simple alphabetical indices will satisfy the requirement; however, the statute should also permit the use of automatic data processing equipment where available.

In 1966, Civil Code Section 2469.2 was enacted to permit the removal of obsolete fictitious name certificates from the files after a stated period of time. A similar procedure should be adopted permitting the destruction of (1) fictitious business name statements, (2) statements of abandonment of use of a fictitious business name, and (3) the entries in the indices relating to these statements.

#### Obtaining compliance with statutory requirements

Under existing law, the only sanction for failing to file a fictitious name certificate is that no action may be "maintained" on a contract made or a transaction had in a fictitious name until the certificate has been filed and published. As previously indicated, this provision permits an action to be commenced even though no fictitious name certificate has been filed and published; but, if the defendant objects to the plaintiff's failure to comply with the fictitious name statute, the action will be abated until the certificate has been filed and published. If the defendant fails to object either by answer or by demurrer, the objection is waived.

The existing sanction does not assure that information as to the identity of a person using a fictitious business name will be available in the principal type of case where it is most needed, i.e., where a person has a claim against a business operating under a fictitious business

name and needs to know the identity of the person or persons conducting the business.

The ineffective and oblique sanction now imposed should be eliminated. Instead, a person who willfully and knowingly fails to file a fictitious business name statement should be subjected to a civil penalty of \$500, which penalty should be recoverable in a civil action brought by the county counsel, or if there is none the district attorney, of any county in which a person has transacted or is transacting business in violation of the statute.

Failure to comply with the publication requirement of the statute should subject the person to a civil penalty of \$25. The latter penalty should be recoverable or offset by an adverse party to an action brought by or against the person failing to comply. Failure to comply with the statute should not make void or unenforceable any transaction entered into by a person while he was not in compliance with the statute.

#### Operative date

The operative date of the proposed statute should be July 1, 1971. The date should be deferred: (1) to allow those persons who must comply with the statute a reasonable time in which to familiarize themselves with its new requirements; and (2) to give the county clerk sufficient time in which to establish the necessary procedures. All persons, including those who are in compliance with Civil Code Sections 2466-2471, would become subject to the act on its operative date--July 1, 1971.<sup>11</sup> However,

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<sup>11</sup> Civil Code Section 2469.2 provides that all fictitious name certificates that were filed prior to the enactment of that section in 1966 expire on January 1, 1971, and a renewal certificate must be filed on or before December 31, 1970, to continue compliance with the statute. Senate Bill No. 102 (1969 Regular Session) would defer expiration to January 1, 1972, and renewal to December 31, 1971. This requirement will be superseded by the requirement that a fictitious business name statement be filed not later than July 1, 1971. Thus, although it is recommended that a new filing be required by all persons doing business under a fictitious name, many, if not most, of such persons would otherwise be required to make a new filing under Civil Code Section 2469.2.

a person should be permitted to file a statement in compliance with the new act at any time after January 1, 1971, and the statement so filed should be deemed to have been filed on July 1, 1971.

#### Relocation of statute

The provisions dealing with fictitious business names should be moved to Part 3 of Division 7 of the Business and Professions Code which imposes "General Business Regulations" relating to "Representations to the Public." Fictitious business name legislation is a type of business regulation. The present location in the Civil Code in the title on "Partnerships" is inappropriate as the statute deals with corporations and individuals as well as with partnerships. Furthermore, the other sections dealing with partnerships and limited partnerships have been moved to other codes.

#### Miscellaneous revisions

In addition to the major changes discussed above, the Commission recommends other technical and relatively minor changes in existing legislation in the interest of clarity and precision. These changes are indicated in the Comments to the proposed statutory provisions that follow:

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The Commission's recommendations would be effectuated by the enactment of the following measure:

An act to repeal Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code, to add Chapter 5 (commencing with Section 17900) to Part 3 of Division 7 of, and to amend Sections 7540, 10159.5, and 10522.5 of, the Business and Professions Code, to amend Section 12300.2 of the Financial Code, to repeal Section 26848 of the Government Code, and to amend Section 6066 of the Revenue and Taxation Code, relating to fictitious business names.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code is repealed.

Comment. Chapter 2, consisting of Sections 2466-2471, is superseded by Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code.

Note. The sections repealed read as follows:

2466. Except as otherwise provided in the next section every person transacting business in this State under a fictitious name and every partnership transacting business in this State under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which his or its principal place of business is situated, a certificate subscribed and acknowledged in the manner provided in Section 2468 of the Civil Code, stating that name in full and the place of residence of such person and stating the names in full of all the members of such partnership and their places of residence.

Such subscribed and acknowledged certificate must be published subsequent to the filing thereof with the county clerk pursuant to Government Code Section 6064, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper in an adjoining county. An affidavit showing

the publication of such certificate as in this section provided shall be filed with the county clerk within 30 days after the completion of such publication, but in no event shall such publication be made prior to the filing of such certificate with the county clerk.

2467. A commercial or banking partnership, established and transacting business in a place without the United States, may, without filing the certificate or making the publication prescribed in the last section, use in this state the partnership name used by it there, although it be fictitious, or do not show the names of the persons interested as partners in such business.

2468. The certificate filed with the clerk as provided in Section 2466 must be signed by the person therein referred to, or by the partners, as the case may be, and acknowledged before some officer, authorized to take the acknowledgment of conveyances of real property, by personally appearing before such officer, notwithstanding the provisions of Section 1195 of the Civil Code. Such certificates may be executed on behalf of any such person or partner by an agent, or at any time after the bankruptcy, incompetency, or death of such a person or partner, by the trustee in bankruptcy or the guardian, conservator, executor or administrator of such person or partner for the purpose of maintaining an action to recover any sums due the bankrupt, incompetent, or deceased person or facilitating the maintenance of an action by the partnership, of which the bankrupt, incompetent, or deceased partner was a member, to recover sums due such partnership. Where a business is hereafter commenced by a person under a fictitious name or a partnership is hereafter formed, the certificate must be filed and the publication designated in that section must be made within one month after the commencement of such business, or after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership. Where the business has been heretofore conducted under a fictitious name or where the partnership

has been heretofore formed, the certificate must be filed and the publication made within six months after the passage of this act. No person doing business under a fictitious name, or his assignee or assignees, nor any persons doing business as partners contrary to the provisions of this article, or their assignee or assignees, shall maintain any action upon or on account of any contract or contracts made, or transactions had, under such fictitious name, or in their partnership name, in any court of this state until the certificate has been filed and the publication has been made as herein required.

2469. On every change in the members of a partnership transacting business in this state under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, except in the cases mentioned in section twenty-four hundred and sixty-seven, a new certificate must be filed with the County Clerk, and a new publication made as required by this Article on the formation of such partnership.

2469.1. Every person and every partnership transacting business in this State under a fictitious name, or designation not showing the names of the persons interested as partners in such business, who has filed a certificate and caused the publication and filing of the affidavit of publication thereof according to the provisions of this chapter, may, upon ceasing to use that name, file a certificate of abandonment of name, stating the name in full and the place of residence of such person, and stating the names in full of all the members of such partnership and their places of residence. Such certificate shall be signed by the person therein referred to, or by one or more of the partners, as the case may be.

Such certificate must be published pursuant to Government Code Section 6064, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper in an adjoining county. An affidavit showing the publication of such certificate shall be filed subsequent to the certificate with the county clerk within 30 days after the completion of such publication.

2469.2. Every certificate of fictitious name filed under the authority of this chapter shall expire and be of no further force and effect at the end of five years following the first day of January next after the filing of a certificate of fictitious name with the county clerk in accordance with Section 2466, unless at any time within 12 months immediately preceding said date of expiration a renewal certificate containing all information required in the original certificate and subscribed and acknowledged as required by that section is filed with the county clerk with whom said original is on file. No such renewal certificate need be published unless there has been a change in the information required in the original certificate, in which event publication shall be made as provided for the original certificate.

Every certificate of fictitious name heretofore filed with the county clerk pursuant to Section 2466 shall expire and be of no further force and effect on and after January 1, 1971, unless at any time on or after January 1, 1970, but not later than December 31, 1970, a renewal certificate in accordance with this section is filed with said county clerk.

2469.3. Upon the filing of a certificate of abandonment pursuant to Section 2469.1 or upon the expiration of a certificate of fictitious name pursuant to Section 2469.2 and following the making of the entry required by Section 2470 the county clerk may destroy the certificate of fictitious name the use of which was so abandoned or which has expired, provided that microfilm copies are taken of the certificates and subsequently filed before they are destroyed.

2470. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him pursuant to this article, entering in alphabetical order the name of every such person who does business under a fictitious name, and the fictitious name, and the name of every such partnership, and of each partner therein.

Upon the abandonment of the use of a fictitious name, or upon the expiration of the certificate of fictitious name, the clerk shall enter the fact of abandonment or expiration in the register.

2471. Copies of the entries of a County Clerk, as herein directed, when certified by him, and affidavits of publication as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

Sec. 2. Chapter 5 (commencing with Section 17900) is added to Part 3 of Division 7 of the Business and Professions Code, to read:

CHAPTER 5. FICTITIOUS BUSINESS NAMES

17900. Fictitious business name defined

17900. (a) As used in this chapter, 'fictitious business name' means:

(1) In the case of an individual, a name that does not include the surname of the individual or a name that suggests the existence of additional owners.

(2) In the case of a partnership or other association of persons, a name that does not include the surname of each general partner or a name that suggests the existence of additional owners.

(3) In the case of a corporation, any name other than the corporate name stated in its articles of incorporation.

(b) A name that suggests the existence of additional owners within the meaning of subdivision (a) is one which includes such words as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business being conducted.

Comment. Subdivision (a) of Section 17900 codifies the definition of "fictitious name" developed by the courts in interpreting former Civil Code Section 2466. See Vagin v. Brown, 63 Cal. App.2d 504, 146 P.2d 923 (1944)(individual); Andrews v. Glick, 205 Cal. 699, 272 Pac. 587

(1928)(partnership); Kadota Fig Ass'n of Producers v. Case-Swayne Co., 73 Cal. App.2d 796, 167 P.2d 518 (1946)(unincorporated cooperative association); Berg Metals Corp. v. Wilson, 170 Cal. App.2d 559, 339 P.2d 869 (1959)(corporation).

The subdivision refers to "general partners" as defined in Section 17901 in order to omit limited partners of partnerships formed under the Uniform Limited Partnership Act (Corporations Code Sections 15501-15531). As a general rule, a limited partner's name may not appear in the firm name without subjecting the limited partner to liability as a general partner. Corp. Code § 15505. See also the Comment to Section 17911.

Subdivision (b) essentially restates existing law in defining "a name that suggests the existence of additional owners." Under prior interpretations the use of such terms as "& Co.," "& Sons," and "Bros." subjected a business to the requirements of the statute. See Swartz & Gottlieb, Inc. v. Marcuse, 175 Cal. 401, 165 Pac. 1015 (1917); North v. Moore, 135 Cal. 621, 67 Pac. 1037 (1902); Byers v. Bourret, 64 Cal. 73, 28 Pac. 61 (1883). This subdivision does, however, eliminate the distinction formerly drawn between "Jones Company" and "Jones & Company," and both names now require a filing under this chapter. Contrast Wetenhall v. Chas. J. Mabrey Constr. Co., 209 Cal. 293, 286 Pac. 1015 (1930) with Byers v. Bourret, supra. As a practical matter, few businessmen were aware of the former technical distinction and both terms suggest the existence of additional owners. An individual proprietor can still conduct business under a name such as "Kohler Steam Laundry" without being required to register under this chapter. See Kohler v. Stephenson, 39 Cal. App. 374, 178 Pac. 970-(1919).

17901. General partner defined

17901. As used in this chapter, "general partner" means:

(a) In the case of a partnership, a general partner.

(b) In the case of an unincorporated association other than a partnership, a person interested in such business whose liability with respect to the business is substantially the same as that of a general partner.

Comment. The term "general partner" is used in Section 17900 and other sections of this chapter. "Unincorporated association" means any unincorporated organization of two or more persons, and subdivision (b) encompasses therefore--among others--joint ventures, marketing cooperatives, syndicates, and Massachusetts trusts. The qualification of Section 17910 that the unincorporated association be transacting business for a profit excludes governmental entities and such nonprofit associations as labor unions, fraternal and charitable organizations, and the like.

17902. Person defined

17902. As used in this chapter, "person" includes individuals, partnerships and other associations, and corporations.

Comment. The term "person" is used in numerous sections of this chapter.

17903. Registrant defined

17903. As used in this chapter, "registrant" means a person who is filing or has filed a fictitious business name statement.

Comment. The term "registrant" is defined to avoid unnecessary repetition in the various sections of this chapter.

17904. Law partnerships and certain medical partnerships exempted

17904. Medical partnerships authorized to practice under Section 2393 and law partnerships are exempt from the requirements of this chapter.

Comment. Existing provisions in the Business and Professions Code concerning the use of fictitious business names by physicians and analogous restrictions imposed by the State Bar upon attorneys practicing in California justify the exemption of medical and law partnerships.

17910. Person transacting business in fictitious business name to file statement

17910. Every person who regularly transacts business in this state for profit under a fictitious business name shall:

(a) File a fictitious business name statement in accordance with this chapter not later than 40 days from the time he commences to transact such business; and

(b) File a new statement in accordance with this chapter on or before the date of expiration of the initial statement and each successive statement thereafter.

Comment. Section 17910 requires every individual, partnership, or other association of persons, and corporation that regularly transacts business for profit in this state under a fictitious name to file a fictitious business name statement. But see Section 17904 (law partnerships and certain medical partnerships not required to file a statement). The language of the section--"person who regularly transacts business in this state for profit"--excludes from the coverage of the statute any person who only occasionally transacts business in California and any nonprofit organization.

Two exemptions from the filing requirement that were recognized under prior law are not continued under this chapter. See Civil Code Section 2467 (superseded by this chapter)(commercial or banking partnership established and transacting business in a foreign country) and Moon v. Martin, 185 Cal. 361, 197 Pac. 77 (1921)(person not maintaining a place of business in this state).

The 40-day period provided for filing the initial fictitious business name statement parallels the 40-day period provided in Corporations Code

Section 15700 for designating an agent to receive process on behalf of a foreign partnership.

See Section 17916 and the Comment to that section for a description of the circumstances under which a fictitious business name statement expires. Filing a new statement also extends the effective period of registration from the date of the new filing. See Section 17916.

17911. Contents of statement

17911. The fictitious business name statement shall include the following information:

(a) The fictitious business name under which the registrant transacts or intends to transact business.

(b) Whether the registrant is (1) an individual, (2) a domestic partnership or other domestic unincorporated association, (3) a foreign partnership or other foreign unincorporated association, (4) a domestic corporation, or (5) a foreign corporation.

(c) If the registrant has a place of business in this state, the street address of his principal place of business in this state. If the registrant has no place of business in this state, the street address of his principal place of business outside of this state.

(d) If the registrant is an individual, his full name and residence address.

(e) If the registrant is a partnership or other association of persons, the full name and residence address of each general partner and, if a limited partnership, that the registrant is a limited partnership.

(f) If the registrant is a corporation, the name of the corporation as set out in its articles of incorporation and the state of incorporation.

(g) The name of the person to whom, and the address to which, the county clerk is to mail the notice required by Section 17917.

Comment. Subdivisions (a), (d), and (e) of Section 17911 restate the substance of prior law under former Civil Code Sections 2466-2470.

Although the information required by subdivisions (c) and (f) was not explicitly required by the Civil Code sections superseded by this chapter, the requirements of these subdivisions conform to the generally prevailing practice under the prior law. Subdivision (e) omits limited partners. The names and addresses of all limited partners are required to be stated in the certificate of limited partnership recorded with the recorder of all counties in which the limited partnership has places of business. See Corp. Code § 15502. Since the registrant is required to show that it is a limited partnership, the remaining information can easily be secured from the recorder. Also various difficulties could arise if limited partners were required to be listed in the fictitious business name statement. See, e.g., J. C. Wattenbarger & Sons v. Sanders, 216 Cal. App.2d 495, 30 Cal. Rptr. 910 (1963)(inclusion of name of limited partner in published fictitious business name certificate did not subject him to the liabilities of a general partner).

Subdivision (b) imposes a requirement not found in the prior law. The inclusion of information revealing the "type of person" registering will enable interested persons to secure further information from either the Secretary of State or other sources concerning the registrant.

The information required by subdivision (g) is necessary to enable the county clerk to mail a notice of the impending expiration of the statement. See Section 17917.

17912. Execution of statement

17912. The fictitious business name statement shall be signed and acknowledged in the manner prescribed by Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code. If the registrant is an individual, the statement shall be signed by the individual; if a partnership or other association of persons, by a general partner; if a corporation, by an executive officer.

Comment. Section 17912 continues the requirement of former Civil Code Section 2468 that the fictitious business name statement be signed and acknowledged. However, it requires the statement to be signed by the individual or in the case of a partnership or other association, by one of the general partners, and does not permit execution by an agent. The section also specifies who may execute the statement on behalf of a corporation, a point not covered by prior law. The form of acknowledgment is prescribed by reference to the appropriate article of the Civil Code.

17913. Filing with county clerk

17913. The fictitious business name statement shall be filed with the clerk of the county in which the registrant has his principal place of business or, if he has no principal place of business in this state, with the clerk of Sacramento county.

Comment. Section 17913 continues the requirement of Civil Code Section 2466 that the fictitious business name information be filed with the county clerk of the county in which the person's principal place of business is located, and further provides for filing in Sacramento county if the registrant has no principal place of business in California.

17914. What constitutes filing

17914. Presentation for filing of a fictitious business name statement and one copy, tender of the filing fee, and acceptance of the statement by the county clerk constitute filing under this chapter. The county clerk shall note on the copy the file number and the date of filing the original and shall certify and deliver or send the copy to the registrant.

Comment. Section 17914 is based on subdivision (c) of Corporations Code Section 24003 which relates to the filing of statements by unincorporated associations designating a principal office in this state or an agent for service of process or both.

17915. Publication of fictitious business name statements

17915. (a) Within 30 days after a fictitious business name statement has been filed pursuant to this chapter, the registrant shall cause to be published as provided in this section a notice containing the following information:

(1) The fictitious business name of the registrant.

(2) If the registrant has a place of business in this state, the street address of the registrant's principal place of business in this state. If the registrant has no place of business in this state, the street address of his principal place of business outside of this state.

(3) In the case of an individual registrant, the full name of the individual as shown in the statement.

(4) In the case of a partnership registrant, the full name of each general partner as shown in the statement.

(5) In the case of a corporate registrant, the name of the corporation as set out in its articles of incorporation as shown in the statement.

(b) The notice required by this section shall be published pursuant to Government Code Section 6061 in a newspaper of general circulation in the county in which the principal place of business of the registrant is located or, if there is no such newspaper in that county, then in a newspaper of general circulation in an adjoining county. If the registrant does not have a place of business in this state, the notice shall be published in a newspaper of general circulation in Sacramento county.

§ 17915

(c) No publication is required if the information required by subdivision (a) has been published previously and there are no changes in the information.

(d) An affidavit showing the publication of the notice required by this section may be filed with the clerk of the county in which the fictitious business name statement is filed within 30 days after the completion of such publication.

Comment. Section 17915 is substantively similar to the provisions of former Civil Code Sections 2466-2471 that required a publication of the fictitious business name statement to be made by the person filing the statement. As under the former law, publication is required to be made in the county where the principal place of business of the registrant is located. However, since the statute requires a fictitious business name statement to be filed by some persons who will not have a place of business in this state, Section 17915 requires publication by those persons in Sacramento county.

The form of notice has been improved both by the elimination of such useless information as the acknowledgment of the signature of the registrant and by the inclusion of all the basic information contained in the indices of the county clerk. The latter enables any interested person to obtain complete information concerning a particular statement from the county clerk of the county in which the principal place of business is located.

Subdivision (d) authorizes, but does not require, a registrant to file an affidavit of publication with the county clerk.

17916. Expiration of statement

17916. (a) Unless the statement expires earlier under subdivision (b) or (c), a fictitious business name statement expires at the end of five years from December 31 of the year in which it was filed in the office of the county clerk.

(b) A fictitious business name statement expires 40 days after any change that renders the facts set forth in the statement pursuant to Section 17911 inaccurate, but a change in the residence address of an individual or general partner does not cause the statement to expire if the new residence address is within the county in which the statement is filed.

(c) A fictitious business name statement expires when the registrant files a statement of abandonment of the fictitious business name described in the statement.

Comment. Section 17916 is designed to ensure that the information on file with the county clerk (see Section 17919) is kept current and to provide a means whereby the county clerk can dispose of obsolete certificates in his files (see Section 17921).

Subdivision (a). The period provided by this subdivision parallels the period provided in subdivision (d) of Corporations Code Section 24003 for a statement filed by an unincorporated association designating its principal office or agent for process or both. Subdivision (a) substantially restates prior law under former Civil Code Section 2469.2.

Subdivision (b). Under former law, a new certificate was required to be filed only when there was a change in the membership of the partnership transacting business. However, in order that the fictitious business

§ 17916

names index will contain current information concerning the registrant, subdivision (b) requires that a new statement be filed whenever any change occurs that renders the facts required to be set forth by Section 17911 inaccurate. For example, when either the registrant changes his principal place of business in this state or, in a case where he had none previously, the registrant acquires a place of business in this state a new statement must be filed. In this regard subdivision (b) is comparable to Corporations Code Sections 3301 (domestic corporations) and 6409 (foreign corporations)(new statement required to be filed by domestic or foreign corporation upon change in location or address of its principal office).

The requirement of former Civil Code Section 2469 that a new statement be filed upon a change in the membership of a partnership is continued by subdivision (b), but as limited partners need not be named in the statement (see Section 17911(e)), the subdivision requires a new filing only upon a change in general partners.

Subdivision (b) also requires a corporation to file a new statement if it continues to transact business regularly under a fictitious business name after a change in its corporate name. Whether former law required a new certificate in this case was uncertain.

§ 17916

Change in residence address of individual or partner. Although Section 17911 requires that a fictitious business name statement include the residence address of the individual registrant or of each partner of a partnership registrant, Section 17916 does not require that a new statement be filed each time there is a change in the residence address of the individual or a partner. However, if the change of residence is other than a change within the county of filing this is significant enough to be reflected in the records on file. Of course, when a new statement is filed because the previous statement has expired under Section 17916, it must contain the address of the individual or each partner as of the date of the new statement.

Subdivision (c). Under this subdivision, a registrant is no longer in compliance with Section 17910 if he continues to do business under his fictitious business name after filing a statement of abandonment under Section 17918.

17917. Notice of impending expiration

17917. Not later than the first day of December immediately preceding the expiration date of a fictitious business name statement as determined under subdivision (a) of Section 17916, the county clerk shall send by first class mail a notice, indicating the date on which the statement will expire and the file number assigned to the statement, to the person designated in the statement to receive such notices. Neither the failure of the county clerk to mail the notice as provided in this section nor the failure of the notice to reach the person to whom it is sent continues the fictitious business name statement in effect after its expiration. Neither the county nor any officer or employee of the county is liable for damages for failure to mail the notice required by this section.

Comment. Section 17917 is based substantially on Corporations Code Section 24006. The section is included to minimize the danger that the registrant will be unaware of the impending expiration of the statement.

17918. Abandonment of use of fictitious business name

17918. (a) A person who has filed a fictitious business name statement may, upon ceasing to transact business in this state under that fictitious business name, file a statement of abandonment of use of fictitious business name. The statement shall be signed and acknowledged in the same manner as a fictitious business name statement and shall be filed with the clerk of each county in which the person has filed his fictitious business name statement.

(b) The statement shall include:

(1) The name being abandoned.

(2) The date on which the fictitious business name statement relating to the fictitious business name being abandoned was filed and the file number assigned to such statement.

(3) In the case of an individual who is abandoning the use of a fictitious business name, the full name of the individual.

(4) In the case of a partnership or other association of persons that is abandoning the use of a fictitious business name, the full names of all the general partners as set forth in the fictitious business name statement.

(5) In the case of a corporation that is abandoning the use of a fictitious business name, the name of the corporation as set forth in its articles of incorporation.

§ 17918

Comment. Section 17918 supersedes Civil Code Section 2469.1.

The information needed to comply with paragraph (2) of subdivision (b) can be secured from the county clerk and is marked on the statement at the time the fictitious business name statement is originally filed.

See Section 17914.

17919. Index of fictitious business name information

17919. (a) The county clerk shall maintain one or more indices which permit the determination of at least the following information:

(1) Whether any business using a specific fictitious business name has on file a fictitious business name statement setting forth such name and, if so, the file number of the statement.

(2) Whether any individual, general partner, or corporation is listed in any fictitious business name statement on file and, if so, the file number of the statement.

(3) Whether a statement of abandonment of use of a specific business name is on file and, if so, the file number of the statement of abandonment.

(b) Four years after a fictitious business name statement has expired, the county clerk may delete the information concerning that statement from the index. Four years after a statement of abandonment of use of fictitious business name has been filed, the county clerk may delete from the index all reference to the use of that name by the person filing the statement.

Comment. Section 17919 requires the county clerk to maintain and keep current indices of fictitious business name statements. This section supersedes former Civil Code Section 2470. The indices required are merely those that facilitate supplying the information required by Section 17920. Generally, in the counties not using automatic processing

equipment, one index will contain in alphabetical order each fictitious business name in use in the county together with the file number of the statement relating to that name so that the other information contained in the statement can be ascertained. A second index will contain in alphabetical order the name of each person doing business under a fictitious name in the county together with the file number or numbers of each statement on file in which that person is listed. Once the file number of the statement is known, a copy of the statement can be easily secured. Section 17919 is drafted, however, to permit the use of any system that will enable a satisfactory records search. In some counties, this will be aided significantly by use of automatic data processing equipment.

Paragraph (3) of subdivision (a) retains the substance of former Civil Code Section 2470 insofar as it requires the fact of abandonment of use of a fictitious business name and the date of filing a statement of such abandonment to be entered in the indices.

Subdivision (b) authorizes the county clerk to purge the fictitious business name index of obsolete entries after four years. The four-year period parallels that provided by Section 17921.

17920. Certified copies of statements

17920. (a) For a fee of two dollars (\$2), the county clerk shall provide any person who so requests a certified copy of any fictitious business name statement or statement of abandonment of use of a fictitious business name on file in his office.

(b) A copy of a statement, when certified as provided in subdivision (a), establishes a rebuttable presumption of all of the following:

(1) The existence of the original statement.

(2) The execution of the statement by the person by whom it purports to have been executed.

(3) The truth of the information required by Section 17911 that is contained in the statement.

(c) The presumptions established by subdivision (b) are presumptions affecting the burden of producing evidence.

Comment. Section 17920 provides for the furnishing of certified copies of statements on file and gives a presumptive effect to the certified copy. The presumption is classified as one affecting the burden of producing evidence. Evidence Code Section 604 provides:

604. The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption. Nothing in this section shall be construed to prevent the drawing of any inference that may be appropriate.

17921. Retention and destruction of statements

17921. (a) The county clerk shall mark each fictitious business name statement with a consecutive file number and the date of filing and shall retain the original statement for his file. He may destroy or otherwise dispose of such statement four years after the statement expires.

(b) The county clerk shall mark each statement of abandonment of use of fictitious business name with a consecutive file number and the date of filing. He may destroy or otherwise dispose of any such statement four years after the statement is filed.

(c) In lieu of retaining the original statement on file, the county clerk may retain a copy of the statement in accordance with Government Code Section 69844.5.

Comment. Section 17921 requires the county clerk to retain current fictitious business name statements and statements of abandonment. The section to this extent continues the substance of former Civil Code Sections 2469.2 and 2469.3. The statements are to be filed consecutively according to file numbers to be assigned to them when they are presented for filing. The statements may then be located by the use of indices prepared by the county clerk. See Section 17919.

Subdivision (a) further authorizes the county clerk to destroy fictitious business name statements four years after they expire. To this extent, it is based on subdivision (a) of Corporations Code Section 24004. However, under the prior law, a statement could be destroyed

only if microfilm copies were made and filed; this requirement is not continued.

Subdivision (b) makes similar provision for statements of abandonment and authorizes destruction of such statements four years after they are filed. No equivalent provision existed under prior law. Taken together, subdivisions (a) and (b) provide a procedure for purging the files of obsolete statements. Subdivision (c) also authorizes the county clerk to retain microfilm or other photographically reproduced copies of the current fictitious business name statements and statements of abandonment.

The county clerk is required to file any statement that meets the requirements of this chapter and is accompanied by the required filing fee. He is not authorized to reject a statement on the ground that the particular fictitious business name is already in use or that the statement was not presented for filing within the time specified in Section 17910. In this respect, Section 17921 continues prior law.

17922. Summaries or compilations of filings

17922. (a) Upon prepayment of the fee established pursuant to subdivision (b), the county clerk may furnish to any person who so requests daily or less frequent summaries or compilations of filings under this chapter.

(b) The fee for furnishing information under this section shall be fixed by the county clerk with the approval of the county board of supervisors and shall be sufficient to pay at least the actual cost of furnishing such information.

Comment. Section 17922 authorizes--but does not require--the county clerk to furnish daily or less frequent summaries or compilations of filings. A comparable provision is included in Section 9407 of the Commercial Code.

17923. Fees for filing statements

17923. (a) The fee for filing a fictitious business name statement is five dollars (\$5). This fee covers the cost of filing and indexing the statement and any affidavit of publication, furnishing one certified copy of the statement to the person filing the statement, and mailing the notice of expiration of the statement.

(b) The fee for filing a statement of abandonment of use of a fictitious business name is two dollars (\$2). This fee covers the cost of filing and indexing the statement.

Comment. Section 17923 supersedes Government Code Section 26848 (repealed by this chapter). The fees are intended to compensate the county clerks for their duties under this chapter.

17924. Civil penalty for violation of chapter

17924. (a) Any person who regularly transacts business in this state under a fictitious business name and knowingly and willfully fails to comply with the requirements of Section 17910 is liable civilly in the sum of five hundred dollars (\$500).

(b) Any person who fails to comply with the requirements of Section 17915 ~~is~~ liable civilly in the sum of twenty-five dollars (\$25).

(c) The sums referred to in subdivisions (a) and (b) may be recovered in an action brought in any court of competent jurisdiction by the county counsel, or if there be none, then by the district attorney, of any county in which the person has transacted or is transacting business under a fictitious business name. Any sums collected by the county counsel or district attorney shall be deposited in the general fund of the county where the action is brought.

(d) The sum referred to in subdivision (b) may be recovered or offset by any adverse party to an action brought by or against a person who at the time the action was commenced was not in compliance with the requirement of Section 17915.

(e) No contract or transaction is void or unenforceable because a party to the contract or transaction has violated this chapter.

(f) Nothing in this chapter prevents a person from filing a fictitious business name statement at any time after the time prescribed in Section 17910.

§ 17924

Comment. Section 17924 provides the only sanctions for failure to comply with the requirements of this chapter. Under subdivision (a), a person who knowingly and willfully fails to file pursuant to Section 17910 is subject to a civil penalty of \$500. A failure to comply with the publication requirement of Section 17915 subjects a person to a civil penalty of \$25 under subdivision (b).

The purpose of subdivision (d) is not to create a new cause of action but simply to permit persons already having a claim to recover this sum both as reimbursement for efforts to discover the information that would have been provided had the person doing business in a fictitious name complied with the statute and as a sanctioning device to secure compliance.

Subdivision (e) makes it clear that failure to comply with the chapter has no effect on the validity or enforceability of a contract or other transaction.

Subdivision (f) permits a person to comply with the provisions of this chapter at any time after the times prescribed in Section 17910. However, late compliance is not made a defense in an action under subdivision (c) to recover the civil penalty for willful failure to comply with the chapter within the periods prescribed.

§ 7540

Sec. 3. Section 7540 of the Business and Professions Code is amended to read:

7540. No licensee shall conduct a business under a fictitious business name unless and until he has obtained the written authorization of the bureau to do so.

The bureau shall not authorize the use of a fictitious business name which is so similar to that of a public officer or agency or of that used by another licensee that the public may be confused or misled thereby.

The authorization shall require, as a condition precedent to the use of such name, ~~the filing of a certificate of doing business under a fictitious name with the county clerk of the county where the licensee's principal place of business is located, in the manner provided in Chapter 2 of Title 10 of Part 4 of Division 3 of the Civil Code~~ that the licensee comply with Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of this code .

A licensee desiring to conduct his business under more than one fictitious business name shall obtain the authorization of the bureau in the manner prescribed in this section for the use of each such name.

The licensee shall pay a fee of ten dollars (\$10) for each authorization to use an additional fictitious business name and for each change in the use of a fictitious business name. If the original license is issued in a nonfictitious name and authorization is requested to have the license reissued in a fictitious business name the licensee shall pay a fee of ten dollars (\$10) for such authorization.

§ 7540

Comment. Section 7540, which relates to private investigators, private patrol operators, insurance adjusters, and repossessioners, is amended to conform to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code which supersedes Chapter 2 of Title 10 of Part 4 of Division 3 of the Civil Code. No substantive change is made in this section.

Sec. 4. Section 10159.5 of the Business and Professions Code is amended to read:

10159.5. Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy of ~~both the entry of the county clerk and the affidavit of publication made pursuant to the provisions of Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code~~ his fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of this code .

Comment. Section 10159.5, which relates to real estate salesmen and brokers, is amended to conform the section to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 which supersedes Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code. No substantive change is made in this section.

Sec. 5. Section 10522.5 of the Business and Professions Code is amended to read:

10522.5. Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy ~~of both the entry of the county clerk and the affidavit of publication made pursuant to the provisions of Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code~~ his fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of this code .

Comment. Section 10522.5 which relates to mineral, oil, and gas brokers and salesmen, is amended to conform the section to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code which supersedes Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code. No substantive change is made in this section.

§ 12300.2

Sec. 6. Section 12300.2 of the Financial Code is amended to read:

12300.2. Every person engaging in the business of a check seller or cashier shall conduct such business under his true name unless he has complied with ~~the provisions of Chapter 2, Title 10, Part 4, Division 3 of the Civil Code~~ Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code .

Comment. Section 12300.2 is amended to conform the section to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code which supersedes Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code. No substantive change is made in this section.

Sec. 7. Section 26848 of the Government Code is repealed.

~~26848.--The-fee-fer-filing-and-indexing-a-certificate-of  
fictitious-name,-including-affidavit-of-publication,-and-the  
fee-fer-filing-and-indexing-a-renewal-certificate-of-fictitious  
name,-is-two-dollars-(\$2)-.~~

Comment. Section 26848 of the Government Code is superseded by  
Business and Professions Code Section 17923.

Sec. 8. (a) This act becomes operative on July 1, 1971, except that at any time after January 1, 1971, an individual, partnership, or corporation may file a fictitious business name statement as provided in Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code, and the certificate so filed shall be deemed to have been filed on July 1, 1971.

(b) The county clerks shall retain all certificates of fictitious name and certificates of abandonment of fictitious names and the registers relating thereto, as provided in Civil Code Sections 2466 to 2471, inclusive, until July 1, 1975. After July 1, 1975, the county clerks may destroy or otherwise dispose of such certificates and registers. No certificate shall be accepted for filing by the county clerks under Civil Code Sections 2466 to 2471, inclusive, after June 30, 1971.

Comment. The new fictitious business name requirements (Business and Professions Code Sections 17900-17924) are made effective on July 1, 1971, but statements are permitted to be filed at any time after January 1, 1971, so that the persons covered by the new requirements will be in compliance on July 1, 1971.

A person who has complied with Civil Code Sections 2466-2471 (the former so-called fictitious name statute) is required to make a new filing under Business and Professions Code Sections 17900-17924 not later than July 1, 1971, if he is regularly transacting business in California. See Business and Professions Code Section 17910.

Subdivision (b) provides for retention of the fictitious name certificates and the registers relating thereto for a limited period following the enactment of the new statute so that the information will be available to persons who have claims arising before July 1, 1971, against firms operating under a fictitious business name.