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1/15/69

Memorandum 69-23

Subject: Study 44 - Fictitious Business Names

The attached tentative recommendation reflects the Commission's decision at the last meeting to include a publication requirement in the fictitious business name statute. This has been accomplished with the addition of Section 17915.1. You will note that we have also retained the "posting" requirement included earlier as a substitute for publication. The staff does not believe that posting imposes too onerous a burden and it may be a useful supplementary means of providing notice to the public.

The staff has attempted to improve the publication requirement by eliminating all but the basic essentials in the notice and reducing the number of publications to two. No attempt has been made to "localize" publication beyond the requirement of publication in the county of the registrant's principal place of business, i.e., county of filing. This may permit a registrant to avoid giving meaningful notice by "burying" his notice in a paper of limited circulation in the area where he intends to do the bulk of his business. However, in view of the dubious validity of the claim that publication ever provides notice to the general public, it seems the lesser of evils to permit the registrant (and his attorney) to select the newspaper they believe to be most suitable for their individual needs. Finally, the staff was directed to review the possibility of excluding certain groups from the operation of the statute. Towards this end, the staff refers you to pages 1364-1367 of the research study (reprint attached).

At the February meeting, we plan to discuss the general scheme of the statute and then to consider and discuss each section of the statute in order that they may be drafted in final form, if possible, for the March meeting. (In this regard, you should consider the short letter received from the county clerks--attached as Exhibit I.)

Respectfully submitted,

Jack Horton
Junior Counsel

Memo 69-23

EXHIBIT I

COUNTY OF LOS ANGELES
COUNTY CLERK AND CLERK OF THE SUPERIOR COURT

WILLIAM G. SHARP
COUNTY CLERK

E. G. HATCHER
CHIEF DEPUTY

111 NORTH HILL STREET
MAILING ADDRESS: P. O. BOX 151
LOS ANGELES, CALIFORNIA 90053
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October 11, 1968

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

Dear John:

This letter is in response to your invitation to make known to the Law Revision Commission the thoughts of the County Clerks prior to your next meeting when you will again consider the statutes relative to fictitious firm name filings. You will note that this letter is signed jointly by Bud James and myself and contains our reaction to your staff recommendations reached after a joint study.

It would first seem proper to congratulate the authors of your documented proposal. It was ably researched and well presented. For the purpose of clarification, on Page 5, paragraph 2, can be found the sentence which reads: "The Commission also recommends that coverage of the statute be limited to persons who are doing business in California regularly under a fictitious business name. . . ." We feel that a more definite term than "regularly" could more clearly identify those who should file as opposed to those who only occasionally transact business within the State and would not therefore be covered.

On Page 10, paragraph 2, we would suggest that a definite destruction date without costly microfilming be set by statute. We are agreed that five years after the date of expiration would be reasonable.

If we are permitted to make one other suggestion it would be that your legislative advocate be prepared to present an alternate plan calling for reasonable publication, to be introduced only if you ran into a

Mr. John H. DeMouly

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October 11, 1968

situation where passage would be impossible without it. We are not prepared nor do we have any desire to recommend the frequency of the publication, but in the event that an affidavit must be filed as evidence of public notice, then it should be required to be presented at the time the certificate of fictitious name is placed on file, with the provision that no certificate be accepted unless the affidavit is so provided.

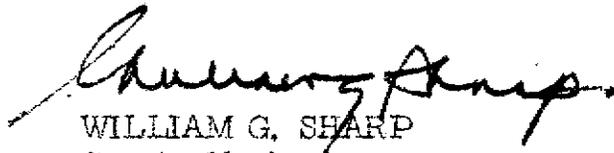
Our greatest concern is that these sections and this portion of our responsibility be clarified in keeping with your proposals so that we can perform the service that should be expected of us and that the record will reflect accurate and up-to-date material.

We again thank you for your consideration.

Sincerely,



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



WILLIAM G. SHARP
County Clerk
Los Angeles County

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STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

FICTITIOUS BUSINESS NAMES

PRELIMINARY 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" names¹ 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 person² or partnership transacting

¹ 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. Inclusion of the surname of each partner or of the individual owner is sufficient. 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 *Vagim v. Brown*, 63 Cal. App.2d 504, 146 P.2d 923 (1944) (individual doing business as "Vagim 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).

² 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.³ The "plea in abatement"⁴ thus afforded to the defendant

³ 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.

⁴ 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.⁵

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.⁶

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. The Commission has given careful consideration to suggestions that the

⁵ 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 fictitious name statute before conducting business under a fictitious name).

⁶ 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.")

statute simply be repealed. On analysis, however, these suggestions are directed to the ineffectiveness and awkwardness of the existing legislation rather than to the central idea of providing a meaningful source of information as to the realities obscured by business or trade names. The Commission has concluded that a thorough revision and streamlining of the legislation can restore its effectiveness and cause 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.⁷

The Commission recommends elimination of the exemption for "foreign" commercial and banking partnerships. 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.⁸ Foreign commercial partnerships should be required to comply with the statute.

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

⁸ Fin. Code § 102.

Persons in 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 and New York has since eliminated the exception.⁹

The Commission also recommends that coverage of the statute be limited to those persons who regularly do business in California under a fictitious business name and that the coverage of the statute be extended to all such persons, even though they may have no established places of business within the state. The need to be able to discover 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 to be able to discover the identity of a person doing business from a fixed location within the state.

Fictitious business name statements

The Commission recommends that every person covered by the statute 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 the existing statute does not expressly require the address of the principal place

⁹ 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.

of business, as a matter of practice this information is included in the fictitious name certificate filed under existing law.

Place of filing of statements

The Commission recommends that a person required to comply with the statute continue to file his statement in the office of the county clerk of the county in which the person has his principal place of business. If the person has no principal place of business in this state, filing should be required in 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. Although in some cases the cost of publication has been more than \$200, a typical minimum charge for the required publication is \$18.

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, an entire locality is served by a single newspaper, and publication can provide notice to the residents of that area. 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.

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 some question.

A survey made by the Commission in 1965 discloses that 42 states have statutes regulating the use of fictitious business or trade names. Thirty-three states do not require publication in a newspaper. Of the nine remaining states, California, Florida, Montana, and Oklahoma require publication four times; Georgia, Minnesota, and Pennsylvania require publication twice; and Nebraska and North Dakota require 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 fictitious business names can serve a useful purpose if the form in which the fictitious business name information is published is improved and the publication of useless material avoided. However, the Commission believes that, in view of its inherent shortcomings, it should be supplemented by another notice-giving procedure. Accordingly, the Commission recommends:

(1) The statute should require that a certified copy of the fictitious business name statement be conspicuously displayed at all times on the premises of each place in which the person is transacting business. Section 6068 of the Revenue and Taxation Code already requires similar posting of sales tax permits. New York, the only state comparable to California in size, population, and business activity, has--as noted above--

even eliminated publication and substituted posting.¹⁰ Posting, unlike publication at the commencement of doing business, gives continuing notice of the nature and identity of the person transacting business under a fictitious name. Moreover, it gives notice to those members of the general public who are directly and immediately concerned, i.e., the ones who are transacting business with the person required to file and post. Posting also simplifies enforcement by enabling ready ascertainment of whether a particular business has filed the necessary fictitious business name statement.

(2) The county clerk should be required to furnish to any person who so requests daily or less frequent summaries or compilations of filings under this statute. Thus any interested person can immediately 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.

(3) 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 in this state (information that is not now required to be published but that ordinarily is included in the published certificate), the name of the individual or corporation or the names of the partners doing business under the fictitious name, and the date the statement was filed. Publication should accompany each

¹⁰ See New York General Business Law Section 130.4 (19).

new filing. 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 two. Although some newspapers now indicate material which is published for the first time, many do not. Thus, the reduction in the number of publications will substantially reduce the volume of material that must be examined by persons using the published information.

Expiration of statement

To ensure that the information on file with the county clerk and posted by the person doing business is kept current and to provide a means whereby the county clerk can dispose of obsolete statements in his files, the Commission recommends:

(1) The fictitious business name statement should be required to 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 the partnerships.

Maintenance of fictitious business name records

The Commission recommends that the county clerks continue to be required to maintain indices of fictitious business name statements that will permit determination of whether: (1) any business using a specific 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 use of a specific fictitious business name is on file.¹¹

¹¹ 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 Commission recommends that the statute set forth only the function of these indices. This will permit each county clerk to use that 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. The Commission recommends adoption of a similar procedure that would permit the destruction of (1) fictitious business name statements, (2) statements of abandonment of use of 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.

It is obvious that 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, the Commission recommends that a person who willfully and knowingly fails to comply with the fictitious business name statute 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 posting or 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 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.

To provide an additional aid to secure compliance with the requirements of the statute, the Commission also recommends that Section 5066 of the Revenue and Taxation Code be amended to require each applicant for a sales tax permit who intends to transact business under a fictitious business name to attach a certified copy of his fictitious business name statement to his permit application.

Operative date

The Commission recommends that the operative date of the proposed statute be July 1, 1971. The date should be deferred for two purposes: (1) to allow those persons who must comply with the statute a reasonable time in which to familiarize themselves with its new requirements; (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, 1971.¹³ However, 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 Commission recommends that the provisions dealing with fictitious business names 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.

¹³ 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. 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.

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:

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 chartered 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.

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 business in this state under the fictitious business name; and

(b) File a new fictitious business name statement in accordance with this chapter on or before the date of expiration of this fictitious business name statement.

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. 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.

Section 6066(b) of the Revenue and Taxation Code also requires every person transacting business as a seller under a fictitious name to attach a copy of the statement required by this chapter to his application for a sales tax permit.

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 address of his principal place of business in 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, in 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 constitutes 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 14914 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.

The original statement is filed by the county clerk (Section 17921) and one copy is certified and returned to the registrant to enable him to comply with the posting requirement of Section 17915.

17915. Posting certified copy of statement

17915. A certified copy of the fictitious business name statement shall at all times be conspicuously displayed on the premises at each place in which the business for which the same was filed is transacted.

Comment. Section 17915 is comparable to Section 6068 of the Revenue and Taxation Code and Section 130.4 of the New York General Business Law. The registrant receives one certified copy of the fictitious business name statement automatically under Section 17914. If he has more than one place of business in this state, the registrant must obtain sufficient additional certified copies of the statement so that he can post one in each place of business. See Section 17920 (obtaining certified copies of statements).

§ 17915.1

17915.1. Publication of fictitious business name statements

17915.1. (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 complete address of the registrant's principal place of business in 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.

(6) The date of filing of the statement.

(b) The notice required by this section shall be published pursuant to Government Code Section 6062a 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 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.

§ 17915.1

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 17915.1 requires publication by those persons in Sacramento County.

The form of notice has been improved by the elimination of such useless information as the acknowledgment of the signature of the registrant and 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.

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) and posted by the person doing business (see Section 17915) 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). Subdivision (a) provides for the expiration of a fictitious business name statement at the end of five years from December 31 following the date it was filed (unless prior to that time one of the circumstances listed in subdivision (b) or (c) occurs). This period 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, to insure that the fictitious business 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 fictitious business name 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.

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 of abandonment of use of fictitious business name shall include:

(1) The fictitious business 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.

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 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 fictitious business 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. Subdivision (a) of Section 17920 provides for the furnishing of certified copies as to statements on file. The registrant receives one certified copy automatically under Section 17914.

Subdivision (b) gives a presumptive effect to the certified copy of a statement obtained under this section. Subdivision (c) classifies the presumption 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, the 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, these 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

17922. Summaries or compilations of filings

17922. (a) Upon prepayment of the fee established pursuant to subdivision (b), the county clerk shall 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 provides for the furnishing of daily or less frequent summaries or compilations of filings. A comparable provision is included in Section 9407 of the Commercial Code. This provision will permit any interested person to secure from one source complete and current information concerning all filings within the county. This, together with the requirement of posting under Section 17915 and publication under Section 17915.1, will ensure that the public has notice of all relevant information. See Section 17915 and the comment to that section.

17923. Fees for filing statements

17923. (a) The fee for filing a fictitious business name statement is ten dollars (\$10). This fee covers the cost of filing and indexing the statement, 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

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 or Section 17915.1 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 a person who fails to comply with the requirement of Section 17915 or Section 17915.1.

(e) No contract or transaction is void or unenforceable merely 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 posting requirement of Section 17915 or publication requirement of Section 17915.1 subjects a person to a civil penalty of \$25 under subdivision (b).

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 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 for filing and indexing a certificate of fictitious name, including affidavit of publication, and the fee for 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. Section 6066 of the Revenue and Taxation Code is amended to read:

6066. (a) Every person desiring to engage in or conduct business as a seller within this State shall file with the board an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

(b) Every person desiring to engage in or conduct business as a seller under a fictitious business name shall attach to his application a certified copy of the fictitious business name statement required by Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code.

Comment. Subdivision (b) of Section 6066 has been added to require every person desiring to transact business as a seller under a fictitious business name to show evidence of compliance with the fictitious business name statute (chapter 5 of Part 3 of Division 7 of the Business and Professions Code) by attaching a certified copy of his fictitious business name statement. The certified copy can be secured without difficulty from the county clerk. See Section 17920 of the Business and Professions Code.

Sec. 9. (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.