CARRYING ON BUSINESS UNDER ASSUMED OR FICTITIOUS NAME
Act 101 of 1907

AN ACT to regulate the carrying on of business under an assumed or fictitious name.

History: 1907, Act 101, Eff. Sept. 28, 1907.

The People of the State of Michigan enact:

445.1 Certificate required to carry on business under assumed name; filing; form; contents; fee; execution and acknowledgment; exceptions; certification and return of duplicate; "person" and "address" defined; imposition of fee by certain charter counties.

Sec. 1. (1) A person shall not carry on, conduct, or transact business in this state under an assumed name, or under a designation, name, or style other than the real name of the person owning, conducting, or transacting that business, unless the person files in duplicate in the office of the clerk of the county or counties in which the person owns, conducts, or transacts, or intends to own, conduct, or transact, business, or maintains an office or place of business, a certificate on a form furnished by the county clerk setting forth the name under which the business owned is, or is to be, conducted or transacted, and the true or real full name and address of the person owning, conducting, or transacting the business. At the time of filing the certificate, the person shall pay the clerk a filing fee of $6.00. The certificate shall be executed and duly acknowledged by the person owning, conducting, or intending to conduct the business.

(2) The selling of goods by sample or through a traveling agent or traveling salesperson, or by means of orders forwarded by the purchaser through the mails, shall not be construed for the purpose of this act as conducting or transacting business so as to require the filing of the certificates.

(3) The county clerk shall certify the duplicate and return it to the applicant.

(4) As used in this act:

(a) "Person" means 1 or more individuals, partnerships, trusts, fiduciaries, or other entities capable of contracting, except corporations and limited partnerships.

(b) "Address" means the residence or principal business address of the person.

(5) A charter county with a population of more than 2,000,000 may impose by ordinance a different amount for the filing fee prescribed by subsection (1). A charter county shall not impose a fee which is greater than the cost of the service for which the fee is charged.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6349;—CL 1929, 9825;—Am. 1931, Act 274, Eff. Sept. 18, 1931;—CL 1948, 445.1;—Am. 1949, Act 151, Eff. Sept. 23, 1949;—Am. 1967, Act 138, Eff. Nov. 2, 1967;—Am. 1968, Act 165, Eff. Nov. 15, 1968 ;—Am. 1969, Act 158, Imd. Eff. Aug. 5, 1969;—Am. 1977, Act 121, Imd. Eff. Oct. 19, 1977;—Am. 1984, Act 294, Imd. Eff. Dec. 20, 1984;—Am. 1990, Act 111, Eff. Mar. 28, 1991.

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445.1a Certificate; use of assumed name authorized for 5 years; renewal certificate; filing, form, fee, and duration; notice; abandonment of assumed name; destruction of certificate.

Sec. 1a. The certificate when acknowledged and filed as required in section 1 shall authorize use of the assumed name for 5 years. If before the expiration date a renewal certificate, on forms to be provided by the county clerk, is filed with the clerk and a fee of $4.00 paid, the renewal certificate shall extend the right to use the assumed name for an additional 5-year period from the date of expiration of the original certificate, or renewal if it has previously been renewed. Between the sixtieth and thirtieth day before the expiration date of an outstanding certificate, the county clerk shall mail to the person or persons whose certificate will expire renewal certificate blank forms, in duplicate, together with a notice, on form to be provided by the clerk, that the certificate authorizing ..... and ..... to conduct business under the assumed name of ..... expires at 5 p.m. on the ..... day of ....., and that failure to file a renewal certificate and pay a fee of $4.00 before the expiration date shall on that date constitute abandonment of the assumed name. The notice required in this act shall be mailed by the county clerk to the last address of the person or persons whose certificate will expire, as stated on the original or renewal certificate. Six years after an original or renewal certificate has expired, the county clerk may destroy the certificate.

History: Add. 1949, Act 151, Eff. Sept. 23, 1949;—Am. 1977, Act 121, Imd. Eff. Oct. 19, 1977.

445.1b Repealed. 1968, Act 165, Eff. Nov. 15, 1968.

Compiler's note: The repealed section pertained to carrying on business under assumed name; additional certificate.

445.2 Assumed name certificates; filing period; rejection by county clerk.

Sec. 2. Persons now owning or conducting such business under an assumed name, or under such

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designation referred to in section 1, shall file such certificate or renewal certificate as hereinbefore prescribed, within 90 days after this act shall take effect and after 30 days' notice from the county clerk, and persons hereafter owning, conducting or transacting business as aforesaid shall, before commencing said business file such certificate in the manner hereinbefore prescribed. The several county clerks of this state are hereby authorized to reject any assumed name which is likely to mislead the public, or any assumed name already filed in the county or so nearly similar thereto as to lead to confusion or deception.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6350;—CL 1929, 9826;—Am. 1931, Act 272, Eff. Sept. 18, 1931;—CL 1948, 445.2;—Am. 1949, Act 151, Eff. Sept. 23, 1949.

445.2a Assumed name; change of business location certificate, filing.

Sec. 2-a. Whenever an assumed name concern has changed or changes its place of business, it shall be the duty of the person or persons conducting such business to file with the county clerk, with whom the certificate or renewal certificate required under the provisions of section 1 or 1a of this act was filed, a certificate stating the change in business location, which certificate shall be attached by the county clerk to the certificate or renewal certificate filed under the provisions of section 1 or 1a of this act, and, in case the business location is changed to some other county or counties in this state, to file the assumed name certificate or renewal certificate required under the provisions of section 1 or 1a of this act, with the clerk of such county, before doing any business in such county.

History: Add. 1931, Act 272, Eff. Sept. 18, 1931;—CL 1948, 445.2a;—Am. 1949, Act 151, Eff. Sept. 23, 1949.

445.2b Assumed name; discontinuance of operation certificate, filing.

Sec. 2-b. Whenever an assumed name concern shall go out of business, it shall be the duty of the person or persons, who have conducted such business, to file a certificate with the clerk of the county or counties in which such concern transacted business, of the discontinuance of the operation of the business in such county or counties, which certificate shall be attached by the county clerk to the certificate or renewal certificate filed under the provisions of section 1 or 1a of this act.

History: Add. 1931, Act 272, Eff. Sept. 18, 1931;—CL 1948, 445.2b;—Am. 1949, Act 151, Eff. Sept. 23, 1949.

445.2c Certified copies of original or renewal certificates; request ; fee.

Sec. 2c. Upon request and payment of $2.00 per copy, the clerk shall supply certified copies of the original or renewal certificates.

History: Add. 1949, Act 151, Eff. Sept. 23, 1949;—Am. 1977, Act 121, Imd. Eff. Oct. 19, 1977;—Am. 1990, Act 111, Eff. Mar. 28, 1991.

445.3 Certificates; alphabetical index; indexing and filing fee; certified copy as evidence; cost of certified copies; certificate as evidence of partnership; service of process; extension of time; jurisdiction.

Sec. 3. (1) The county clerk shall keep an alphabetical index of all persons filing certificates, provided for in this act, and for the indexing and filing of the certificates, shall receive a fee of $10.00. A copy of the certificate duly certified to by the county clerk in whose office the same is filed, shall be presumptive evidence in all courts of law in this state of the facts contained in the certificate. Upon the payment of the $10.00, the payer shall be entitled to 2 certified copies of the certificate without extra charge, with additional copies at $1.00 each at the time of filing the original certificate.

(2) If 2 or more persons file a certificate to carry on a business under an assumed name, the certificate shall be prima facie evidence of a contract of partnership.

(3) Every person who is a nonresident of this state, upon filing a certificate provided for in this act, shall file an irrevocable consent that actions may be commenced against the person in the courts of this state, by service of process or pleading authorized by the laws of this state on the county clerk in whose office the certificate and consent are filed. For the filing of the consent, the county clerk shall receive a fee of $2.00.

(4) The county clerk shall keep a record of each process and the date and hour of service. Notice of service and a copy of the summons shall immediately either be served upon the defendant personally by the sheriff or constable of the county in which the defendant resides or sent by certified mail by the plaintiff or the plaintiff's attorney to the defendant. If personal service of the notice and copy of summons is had upon the defendant, the officer making the service shall so state in the affidavit of service which shall be filed with the court having jurisdiction of the cause, or if service be made by certified mail, then the plaintiff or the plaintiff's attorney shall make an affidavit showing that service of the notice and summons has been made upon the defendant by certified mail and the affiant shall attach to the affidavit a true copy of the summons and notice served and the return receipt of the defendant and shall file the affidavit and attached papers with

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the court having jurisdiction of the cause. The court in which the action is pending may order an extension of time necessary to afford the defendant reasonable opportunity to defend the action.

(5) The circuit court of the county in the office of the county clerk of which the certificate is filed shall have jurisdiction of an action brought against the nonresident person, but this provision shall not be construed as depriving any other court of jurisdiction.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6351;—CL 1929, 9827;—Am. 1939, Act 104, Eff. Sept. 29, 1939;—Am. 1947, Act 255, Eff. Oct. 11, 1947;—CL 1948, 445.3;—Am. 1949, Act 151, Eff. Sept. 23, 1949;—Am. 1963, Act 29, Eff. Sept. 6, 1963;—Am. 1977, Act 121, Imd. Eff. Oct. 19, 1977.

445.4 Contents of certificate; applicability of act to corporation or limited partnership.

Sec. 4. (1) The certificate referred to in section 1, for any person that is named in the certificate and is not an individual, shall state the nature of the entity; the statutory law, if any, under which it was organized; the place and the date of filing with any governmental authority, identifying it, of any documents, describing them, required to be filed in order to accomplish or complete the organization of the entity and to entitle it to operate or transact business under the laws of this state and, if organized elsewhere, of the state or country where organized; if the person is a fiduciary, the date of the last will and testament or trust agreement and the court, place, and date of admission to probate of the will or the names and addresses of the parties to the trust agreement, and the name and address of each fiduciary; and, if the person is a partnership, the name and address of each general partner.

(2) This act does not affect or apply to any corporation or limited partnership organized under the laws of this state, or to any corporation or limited partnership organized under the laws of any other state and lawfully doing business in the state.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6352;—CL 1929, 9828;—CL 1948, 445.4;—Am. 1967, Act 138, Eff. Nov. 2, 1967;—Am. 1968, Act 165, Eff. Nov. 15, 1968;—Am. 1990, Act 111, Eff. Mar. 28, 1991;—Am. 2012, Act 567, Imd. Eff. Jan. 2, 2013.

445.5 Violation of act; penalty; violation of contracts, effect.

Sec. 5. Any person or persons owning, carrying on or conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25.00 nor more than $100.00 or by imprisonment in the county jail for a term not exceeding 30 days or by both such fine and imprisonment in the discretion of the court, and each day any person or persons shall violate any provisions of this act shall be deemed a separate offense: Provided, however, The fact that a penalty is provided herein for non-compliance with the provisions of this act shall not be construed to avoid contracts; but any person or persons failing to file the certificate required by section 1 or 1a shall be prohibited from bringing any suit, action or proceeding in any of the courts of this state, in relation to any contract or other matter made or done by such person or persons under an assumed or fictitious name, until after full compliance with the provisions of this act; but no person or persons doing business under a fictitious name or as the assignee or assignees thereof shall maintain or prosecute any action, nor shall any order, judgment, or decree be made in any action heretofore or hereafter commenced in any court of this state upon or on account of any contract or contracts made or transactions had under such fictitious name after August 14, 1919, if the conduct of such business under such fictitious name has ceased, or if it is still conducted under such fictitious name, then until after full compliance with the provisions of this act.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6353;—Am. 1919, Act 263, Eff. Aug. 14, 1919;—CL 1929, 9829;—Am. 1931, Act 274, Eff. Sept. 18, 1931;—CL 1948, 445.5;—Am. 1949, Act 151, Eff. Sept. 23, 1949.

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