

BILL ANALYSIS

C.S.H.B. 1787
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law requires certain business entities to file a certificate of formation with the secretary of state and designate and continuously maintain an individual or organization as a registered agent to be served any process, notice, or demand served on the entity.

Occasionally, an individual or organization is designated as a registered agent without the individual's or organization's knowledge or consent. The liability of a person or organization that does not consent to such designation when named as a party in a process, notice, or demand is unclear, as is the liability of a registered agent that did not consent to serve.

This bill seeks to establish liability for represented entities to ensure the consent of their designated registered agent to serve in such capacity and to provide clarification on the liability of a designated registered agent which did not consent to serve.

C.S.H.B. 1787 establishes that penalties relating to liability for false filing instruments apply with respect to a false statement in a registered agent filing that names a person the registered agent of a represented entity without the person's consent. The bill also establishes that a person named as a registered agent of a represented entity without the person's consent may not be held liable for any obligation of the represented entity.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1787 amends the Business Organizations Code to establish as a qualification for an entity's registered agent on whom process, notice, or demand may be served that the individual or organization has consented to serve as the entity's registered agent and to specify that an organization representing an entity as a registered agent is an organization other than the filing entity or foreign filing entity to be represented. The bill establishes that the designation or appointment of a person as registered agent by an organizer or managerial official of an entity in a registered agent filing is an affirmation by the organizer or managerial official that the person named as registered agent has consented to serve in that capacity. The bill establishes that if a person designated or appointed as registered agent in a registered agent filing before the sale, acquisition, or transfer of a majority-in-interest or majority interest of the outstanding ownership or membership interests of the represented entity continues to serve in that capacity after the sale, acquisition, or transfer, the person's continuation of service is an affirmation by the governing authority of the represented entity that the governing authority has verified that the person named as registered agent has consented to continue to serve as the entity's registered agent.

C.S.H.B. 1787 authorizes a person designated or appointed as an entity's registered agent in a

registered agent filing without the person's consent to terminate the person's appointment or designation as registered agent by filing a statement of rejection of appointment with the filing officer, and sets forth requirements for the statement of rejection of appointment. The bill establishes that the designation or appointment of a person as registered agent and the designation of the registered office terminate on acceptance of the person's statement of rejection of appointment by the filing officer. The bill requires the secretary of state, on such termination, to send notice to the represented entity of the necessity to designate or appoint a new registered agent and registered office in accordance with state law. The bill prohibits the filing officer from charging a fee for the filing of a statement of rejection of appointment. The bill establishes that the designation of the registered office, in addition to the appointment of the registered agent, terminate on a certain day after the secretary of state receives notice under provisions relating to the resignation of a registered agent.

C.S.H.B. 1787 provides that the only duties of a registered agent are to forward to or otherwise notify the represented entity at the appropriate address of any process, notice, or demand that is served on or received by the agent and to provide the notices required or permitted by law to be given to the represented entity at that address. The bill specifies that a person named as a registered agent without the person's consent is not required to perform these duties. The bill establishes that provisions relating to liability for false filing instruments apply with respect to a false statement in a registered agent filing that names a person the registered agent of a represented entity without the person's consent.

C.S.H.B. 1787 establishes that a person designated or appointed as the registered agent of a represented entity is not liable solely because of the person's designation or appointment as registered agent for the debts, liabilities, or obligations of the represented entity. The bill prohibits a person who has been designated or appointed as a registered agent in a registered agent filing but has not consented to serve as the represented entity's registered agent from being held liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the represented entity solely because of the person's designation or appointment as registered agent or liable to the represented entity or to a person who reasonably relied on the unauthorized designation or appointment solely because of the person's failure or refusal to perform the duties of a registered agent.

C.S.H.B. 1787 defines "registered agent filing," "represented domestic entity," "represented entity," and "represented foreign entity."

EFFECTIVE DATE

January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1787 adds provisions not in the original to define "represented domestic entity" and "represented foreign entity." The substitute simplifies the definition added in the original for "represented entity" to mean a represented domestic entity or represented foreign entity. The substitute differs from the original by making conforming changes relating to the new definitions in provisions governing the designation and maintenance of registered agents and registered offices and consent to serve as a registered agent. The substitute makes clarifying changes not in the original in the definition of "registered agent filing" and adds an appointment of agent by a defense based development authority to that definition.

C.S.H.B. 1787 removes a provision in the original adding a person named as a registered agent without the person's consent to provisions relating to resignation of a registered agent. The substitute establishes that provisions relating to liability for false filing instruments apply with respect to a false statement in a registered agent filing that names a person the registered agent of a represented entity without the person's consent, rather than establishing that an organizer or

managerial officer of an entity who designates a person as a registered agent for the entity without the person's consent commits an offense under those provisions and authorizing the person to recover damages, court costs, and attorney's fees. The substitute adds provisions not in the original to authorize a person designated or appointed as an entity's registered agent in a registered agent filing without the person's consent to terminate the appointment or designation by filing a statement of rejection of appointment. The substitute takes effect January 1, 2010, rather than September 1, 2009, as in the original.