

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 3, 2011**

**TO:** Honorable Joe Deshotel, Chair, House Committee on Business & Industry

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB3141** by Hartnett (Relating to the registration and protection of trademarks.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3141, As Introduced: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>	<b>Probable Revenue Gain/(Loss) from General Revenue Fund 1</b>
2012	(\$762,118)	\$762,118
2013	(\$589,718)	\$589,718
2014	(\$589,718)	\$589,718
2015	(\$589,718)	\$589,718
2016	(\$589,718)	\$589,718

**Fiscal Analysis**

The bill would make several changes to Chapter 16 of the Business and Commerce Code on trademarks.

The bill would make a mark registrable except for under certain circumstances to include if the mark resembles a mark registered in this state or an unabandoned mark or trade name previously used by another person.

The certificate of registration issued by the Secretary of State (SOS) would be required to contain certain items to include the Secretary of State's signature, the SOS official seal, and a reproduction of the mark.

The bill would allow a license, security interest, or mortgage that relates to a mark registered or an application pending to be recorded with SOS.

SOS would be allowed by rule to prescribe the amount of fees payable for the various applications and for the filing and recording of those applications for related services.

The bill would take effect on September 1, 2011.

### **Methodology**

Currently, the Secretary of State (SOS) is only required to not register unabandoned trademarks that were registered by SOS. The bill would require that a mark not be registered if it resembles an unabandoned mark or trade name previously used by another person and the bill does not specify that it is limited only to marks that were registered with SOS.

It is assumed that SOS would be required to research the marks and trade names in each county before issuing a certificate of registration. SOS performed trial searches and determined it took an average of six to eight minutes to perform various searches in each county to ensure that a similar mark was not registered. SOS receives approximately 1,100 new applications per year. Therefore, it is assumed that SOS would need funding for 16 full-time-equivalents and associated costs to research counties for similar trademarks (1,100 new applications x 7 minutes to research x 254 counties / 60 minutes in an hour / 40 hours in a workweek / 52 weeks in a year).

The bill would allow SOS to prescribe the amount of fees payable for the various applications and for the filing and recording of those applications for related services. It is assumed that SOS would raise fees to equal costs associated with the implementations of this legislation; however, SOS is currently not appropriated these fees.

### **Technology**

It is assumed the Secretary of State would need to make modifications to the Business Entity and Secured Transaction (BEST) desktop application to allow for the required changes to the certificate of registration issued by the Secretary of State (SOS).

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State

**LBB Staff:** JOB, AG, MS, BTA