

BILL ANALYSIS

C.S.H.B. 2753
By: Villalba
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, a majority of states have a standard for a business entity name that requires a name to be distinguishable on the record, prohibits a name that is the same or deceptively similar to an existing name, or is a variation of either of those standards. The entity name standard in Texas, the parties suggest, is more complex, out of step with other jurisdictions, confusing to the public, and a frequent reason for rejection of a document. C.S.H.B. 2753 seeks to address this issue by revising the standard.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 2753 amends the Business Organizations Code to revise the prohibitions against identical and deceptively similar business entity names and the reservation or registration of such names by requiring the name of a filing entity or the name under which a foreign filing entity registers to transact business in Texas to be distinguishable in the records of the secretary of state from the name of another existing filing entity, the name of a foreign filing entity that is registered with the secretary of state, an assumed name under which a foreign filing entity is registered to transact business in Texas because the foreign filing entity's name is not available, a name that is reserved, or a name that is registered to certain organizations that are authorized to do business in Texas as a bank, trust company, savings association, or insurance company, or that are foreign filing entities not registered to do business in Texas. The bill conditions the secretary of state's authority to reserve the exclusive use of a name and to register a name for certain organizations that are authorized to do business in Texas as a bank, trust company, savings association, or insurance company, or that are foreign filing entities not registered to do business in Texas on the name being distinguishable in the secretary of state's records from those same names.

C.S.H.B. 2753 specifies that, for purposes of an exception to that distinguishable name requirement or the conditioned authority to reserve or register an entity name if the other entity or the person for whom the name is reserved or registered consents in writing to the use of the name, the other entity or person must also file with the secretary of state a filing instrument that changes the entity's name or withdraws the reservation or registration of the name, as appropriate. The bill adds an exception to the distinguishable name requirement and the conditioned authority for a filing entity, foreign filing entity, or applicant that delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction

establishing the entity's right to have, reserve, or register the name, as applicable.

EFFECTIVE DATE

June 1, 2016.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2753 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 5.051, Business Organizations Code, is amended to read as follows:

Sec. 5.051. **ASSUMED NAME.** A domestic entity or a foreign entity having authority to transact business in this state may transact business under an assumed name by filing an assumed name certificate in accordance with Chapter 71, Business & Commerce Code. Except as provided by Section 9.004(b)(1), the ~~[The]~~ requirements of this subchapter do not apply to an assumed name set forth in an assumed name certificate filed under that chapter.

SECTION 2. Section 5.053, Business Organizations Code, is amended to read as follows:

Sec. 5.053. **DISTINGUISHABLE** ~~[IDENTICAL—AND—DECEPTIVELY SIMILAR]~~ **NAMES REQUIRED** ~~[PROHIBITED]~~. (a) The name of a [A] filing entity or the name under which ~~[may not have a name, and]~~ a foreign filing entity registers ~~[may not register]~~ to transact business in this state must be distinguishable in the records of the secretary of state from ~~[under a name, that is the same as, or that the secretary of state determines to be deceptively similar or similar to]:~~

- (1) the name of another existing filing entity;
- (2) the name of a foreign filing entity that is registered under Chapter 9;
- (3) the assumed name under which a foreign filing entity is registered to transact business in this state because its name is not available;

(4) a name that is reserved under Subchapter C; or

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Section 5.053, Business Organizations Code, is amended to read as follows:

Sec. 5.053. **DISTINGUISHABLE** ~~[IDENTICAL—AND—DECEPTIVELY SIMILAR]~~ **NAMES REQUIRED** ~~[PROHIBITED]~~. (a) The name of a [A] filing entity or the name under which ~~[may not have a name, and]~~ a foreign filing entity registers ~~[may not register]~~ to transact business in this state must be distinguishable in the records of the secretary of state from ~~[under a name, that is the same as, or that the secretary of state determines to be deceptively similar or similar to]:~~

- (1) the name of another existing filing entity;
- (2) the name of a foreign filing entity that is registered under Chapter 9;
- (3) an assumed name under which a foreign filing entity is registered to transact business in this state under Section 9.004(b)(1) because the foreign filing entity's name is not available;

(4) a name that is reserved under Subchapter C; or

(5) [(4)] a name that is registered under Subchapter D.

(b) Subsection (a) does not apply if:

(1) the other entity or the person for whom the name is reserved or registered, as appropriate, consents in writing to the use of the [similar] name and files with the secretary of state a filing instrument that changes the entity's name or withdraws the reservation or registration of the name, as appropriate; or

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the entity's right to have the name.

No equivalent provision.

(5) [(4)] a name that is registered under Subchapter D.

(b) Subsection (a) does not apply if:

(1) the other entity or the person for whom the name is reserved or registered, as appropriate, consents in writing to the use of the [similar] name and files with the secretary of state a filing instrument that changes the entity's name or withdraws the reservation or registration of the name, as appropriate; or

(2) the filing entity or foreign filing entity delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the entity's right to have the name.

SECTION 2. Section 5.102, Business Organizations Code, is amended to read as follows:

Sec. 5.102. RESERVATION OF CERTAIN NAMES PROHIBITED; EXCEPTIONS. (a) A name may be reserved under this subchapter only if the name is distinguishable in the records of the secretary of state from [The secretary of state may not reserve a name that is the same as, or that the secretary of state considers deceptively similar or similar to]:

(1) the name of an existing filing entity;

(2) the name of a foreign filing entity that is registered under Chapter 9;

(3) an assumed name under which a foreign filing entity is registered to transact business in this state under Section 9.004(b)(1) because the foreign filing entity's name is not available;

(4) a name that is reserved under this subchapter; or

(5) [(4)] a name that is registered under Subchapter D.

(b) Subsection (a) does not apply if:

(1) the other entity or the person for whom the name is reserved or registered, as appropriate, consents in writing to the subsequent reservation of the [similar] name and files with the secretary of state a filing instrument that changes the entity's name or withdraws the reservation or registration of the name, as appropriate; or

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to reserve the name.

No equivalent provision.

SECTION 3. Section 5.153, Business Organizations Code, is amended to read as follows:

Sec. 5.153. CERTAIN REGISTRATIONS PROHIBITED; EXCEPTIONS. (a) A name may be registered under this subchapter only if the name is distinguishable in the records of the secretary of state from [~~The secretary of state may not register a name that is the same as, or that the secretary of state determines to be deceptively similar or similar to~~]:

- (1) the name of an existing filing entity;
- (2) the name of a foreign filing entity that is registered under Chapter 9;
- (3) an assumed name under which a foreign filing entity is registered to transact business in this state under Section 9.004(b)(1) because the foreign filing entity's name is not available;
- (4) a name that is reserved under Subchapter C; or
- (5) [~~(4)~~] a name that is registered under this subchapter.

(b) Subsection (a) does not apply if:

- (1) the other entity or the person for whom the name is reserved or registered, as appropriate, consents in writing to the registration of the [~~similar~~] name and files with the secretary of state a filing instrument that changes the entity's name or withdraws the reservation or registration of the name, as appropriate; [ø]
- (2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to register the name; or
- (3) the applicant is a bank, trust company, savings association, or insurance company that has been in continuous existence from a date that precedes the date the conflicting name is filed with the secretary of state.

SECTION 3. This Act takes effect June 1, 2016.

SECTION 4. Same as introduced version.