

BILL ANALYSIS

Senate Research Center
85R7720 TSR-F

S.B. 1835
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Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1835 amends provisions in the Business Organizations Code, primarily Chapter 5, impacting the filing and administration by the Texas secretary of state (SOS) of business entity names. In most states, the business names registration process, the Model Business Corporation Act, and the Uniform Business Organizations Code follow the modern standard that a name be "distinguishable" from the name of another existing entity.

The current business entity name standard in Texas is a complicated three-tiered process that is vague and makes it difficult for businesses to register. Interested parties note that this complex standard, based generally on a finding by SOS that a name is "similar or deceptively similar" to another name, is hard to administer and out of step with most other states. This results in confusion and uncertainty in registering names, which in turn increases the costs and registration timeframes associated with establishing new business entities in Texas or qualifying out-of-state entities to do business in Texas.

S.B. 1835 adopts the widely used, business friendly "distinguishable in the records of the Secretary of State" name standard.

As proposed, S.B. 1835 amends current law relating to names of domestic and foreign filing entities for transacting business in this state and creates an offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.002, Business Organizations Code, by adding Subdivision (21-a) to define "fictitious name."

SECTION 2. Amends Subchapter A, Chapter 5, Business Organizations Code, by adding Sections 5.002, 5.003, and 5.004, as follows:

Sec. 5.002. EVIDENCE OF ESTABLISHED RIGHT TO INDISTINGUISHABLE NAME. Authorizes the Texas secretary of state (SOS), notwithstanding Sections 5.053, 5.102, and 5.153, to register or reserve a name requested on an application for registration filed by a foreign filing entity, or an application for reservation or registration of a name filed by a person, that is not a distinguishable name from another name that is registered or reserved in the records of SOS under this chapter if the foreign filing entity or person delivers to SOS a certified copy of the final judgment of a court of competent jurisdiction that establishes the entity's or person's right to the name in this state.

Sec. 5.003. LIABILITY FOR CERTAIN FALSE WRITTEN STATEMENTS. (a) Provides that this section applies only to a written statement of consent to use of a name that is provided to SOS under Section 5.053(b), 5.102(b), or 5.153(b).

(b) Authorizes a person to recover damages, court costs, and reasonable attorney's fees if the person incurs a loss and other conditions are met.

(c) Authorizes a person to recover under Subsection (b) from certain individuals and entities.

Sec. 5.004. DELIVERY OF FALSE STATEMENT; OFFENSE. (a) Provides that a person commits an offense if the person signs or directs the delivery of a written statement of consent described by Section 5.053(b), 5.102(b), or 5.153(b) that the person knows is materially false with intent that the written statement of consent be delivered on behalf of an entity to SOS.

(b) Provides that an offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

SECTION 3. Amends Section 5.053, Business Organizations Code, as follows:

Sec. 5.053. New heading: DISTINGUISHABLE NAMES REQUIRED. (a) Requires the name of a filing entity or the name under which a foreign filing entity registers to transact business in this state to be distinguishable in the record of SOS from certain names, rather than prohibits a filing entity from having a name, and a foreign filing entity from registering to transact business in this state under a name that is the same as, or that SOS determines to be deceptively similar or similar to, certain names.

(b) Provides that Subsection (a) does not apply if the other certain entity or certain person, as appropriate, provides to SOS a notarized written statement of the entity's or person's consent to the use of the name, rather than similar name.

(c) Provides that, if SOS determines that an entity or person described by Subsection (b) is consenting to the use of a name that is the same as the name or fictitious name of the entity or is the same as the name reserved or registered for the entity or person, the entity's or person's consent is not valid.

SECTION 4. Amends Section 5.102, Business Organizations Code, as follows:

Sec. 5.102. New heading: LIMITATION ON THE RESERVATION OF CERTAIN NAMES. (a) Authorizes SOS to reserve a name under this subchapter (Reservation of Names) only if the name is distinguishable in the records of SOS from certain names, rather than prohibits SOS from reserving a name that is the same as, or that SOS consider deceptively similar or similar to certain names.

(b) Provides that subsection (a) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, provides to SOS a notarized written statement of the entity's or person's consent to the subsequent reservation of the name, rather than similar name.

(c) Provides that, if SOS determines that an entity or person described by Subsection (b) is consenting to the subsequent reservation of a name that is the same as the name or fictitious name of the entity or is the same as the name reserved or registered for the entity or person, the entity's or person's consent is not valid.

SECTION 5. Amends Section 5.153, Business Organizations Code, as follows:

Sec. 5.153. New heading: LIMITATION ON THE REGISTRATION OF CERTAIN NAMES. (a) Authorizes SOS to register a name under this subchapter (Registration of Names) only if the name is distinguishable in the records of SOS from certain names, rather than prohibits SOS from registering a name that is the same as, or that SOS consider deceptively similar or similar to, certain names.

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

(1) the other entity or the person for whom the name is reserved or registered, as appropriate, provides to SOS a notarized written statement of the entity's or person's consent to the registration of the name, rather than similar name; or

(2) 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 indistinguishable name, rather than the conflicting name, is filed with SOS.

(c) Provides that, if SOS determines that an entity or person described by Subsection (b)(1) is consenting to the registration of a name that is the same as the name or fictitious name of the entity or is the same as the name reserved or registered for the entity or person, the entity's or person's consent is not valid.

SECTION 6. Amends Section 9.105, Business Organizations Code, as follows:

Sec. 9.105. New heading: USE OF DISTINGUISHABLE NAME REQUIRED. Prohibits SOS from, if SOS determines that the name of a foreign filing entity or the fictitious name under which it is registered to transact business in this state does not comply with Chapter 5 (Names of Entities; Registered Agents and Registered Offices), from accepting for filing the certificate of reinstatement unless the filing entity contemporaneously amends its registration to change its name to a name that complies with Chapter 5, or provides a fictitious name under which the foreign filing entity will transact business in this state that complies with Chapter 5, rather than prohibits SOS, if SOS determines that a foreign filing entity's name or the name under which it is registered to transact business in this state is the same as, deceptively similar to, or similar to a name of a filing entity or foreign filing entity as provided by or reserved or registered under this code, from accepting for filing the certificate of reinstatement unless the foreign filing entity amends its registration to change its name or obtains consent for the use of the similar name.

SECTION 7. Amends Section 11.203, Business Organizations Code, as follows:

Sec. 11.203. New heading: USE OF DISTINGUISHABLE NAME REQUIRED. Prohibits SOS, if SOS determines that a filing entity's name contained in a certificate of reinstatement filed under Section 11.202 (Procedures for Reinstatement) does not comply with Chapter 5, from accepting for filing the certificate of reinstatement unless the filing entity contemporaneously amends its certificate of formation to change its name to a name that complies with Chapter 5, rather than prohibits SOS, if SOS determines that a filing entity's name contained in a certificate of reinstatement filed under Section 11.202 is the same as, deceptively similar to, or similar to a name of a filing entity or foreign entity on file as provided by or reserved or registered under this code, from accepting for filing the certificate of reinstatement unless the filing entity contemporaneously amends its certificate of formation to change its name or obtains consent for the use of the similar name.

SECTION 8. Makes application of Section 5.002, Business Organizations Code, as added by this Act, prospective.

SECTION 9. Makes application of Sections 5.102 and 5.153, Business Organizations Code, as amended by this Act, prospective.

SECTION 10. Makes application of Sections 9.105 and 11.203, Business Organizations Code, as amended by this Act, prospective.

SECTION 11. Effective date: June 1, 2018.