

By: Villalba

H.B. No. 2856

A BILL TO BE ENTITLED

AN ACT

relating to names of domestic and foreign filing entities for transacting business in this state; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.002, Business Organizations Code, is amended by adding Subdivision (21-a) to read as follows:

(21-a) "Fictitious name" means an assumed name:

(A) that a foreign filing entity adopts for use because the name of the entity as stated in the entity's certificate of formation or similar organizational instrument is not available for use under the laws of this state; and

(B) under which the foreign filing entity is registered to transact business in this state, in accordance with Chapter 9.

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

Sec. 5.002. EVIDENCE OF ESTABLISHED RIGHT TO INDISTINGUISHABLE NAME. Notwithstanding Sections 5.053, 5.102, and 5.153, the secretary of state may 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 the

secretary of state under this chapter if the foreign filing entity or person delivers to the secretary of state 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) This section applies only to a written statement of consent to use of a name that is provided to the secretary of state under Section 5.053(b), 5.102(b), or 5.153(b).

(b) A person may recover damages, court costs, and reasonable attorney's fees if the person incurs a loss and:

(1) the loss is caused by a:

(A) forged written statement; or

(B) delivered written statement that constitutes an offense under Section 5.004; or

(2) the person reasonably relies on:

(A) a false statement of material fact in a written statement; or

(B) the omission in a written statement of a material fact required by this code to be included in the statement.

(c) A person may recover under Subsection (b) from:

(1) each person who forged the forged written statement or signed the written statement and knew when the statement was signed of the false statement or omission;

(2) any managerial official of the entity who directed the signing and delivery of the written statement who knew or should have known when the statement was signed or filed of the false

1 statement or omission; or

2 (3) the entity that authorizes the delivery of the
3 written statement.

4 Sec. 5.004. DELIVERY OF FALSE STATEMENT; OFFENSE. (a) A
5 person commits an offense if the person signs or directs the
6 delivery of a written statement of consent described by Section
7 5.053(b), 5.102(b), or 5.153(b) that the person knows is materially
8 false with intent that the written statement of consent be
9 delivered on behalf of an entity to the secretary of state.

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

13 SECTION 3. Section 5.053, Business Organizations Code, is
14 amended to read as follows:

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

23 (1) the name of another existing filing entity;

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

26 (3) the fictitious name under which a foreign filing
27 entity is registered to transact business in this state;

1 (4) a name that is reserved under Subchapter C; or
2 (5) ~~[(4)]~~ a name that is registered under Subchapter
3 D.

4 (b) Subsection (a) does not apply if the other entity or the
5 person for whom the name is reserved or registered, as appropriate,
6 provides to the secretary of state a notarized written statement of
7 the entity's or person's consent to the use of the ~~[similar]~~ name.

8 (c) If the secretary of state determines that an entity or
9 person described by Subsection (b) is consenting to the use of a
10 name that is the same as the name or fictitious name of the entity or
11 is the same as the name reserved or registered for the entity or
12 person, the entity's or person's consent is not valid.

13 SECTION 4. Section 5.102, Business Organizations Code, is
14 amended to read as follows:

15 Sec. 5.102. LIMITATION ON THE RESERVATION OF CERTAIN NAMES
16 ~~[PROHIBITED; EXCEPTIONS]~~. (a) The secretary of state may ~~[not]~~
17 reserve a name under this subchapter only if the name ~~[that]~~ is
18 distinguishable in the records of the secretary of state from ~~[the~~
19 ~~same as, or that the secretary of state considers deceptively~~
20 ~~similar or similar to]~~:

21 (1) the name of an existing filing entity;
22 (2) the name of a foreign filing entity that is
23 registered under Chapter 9;

24 (3) the fictitious name under which a foreign filing
25 entity is registered to transact business in this state;

26 (4) a name that is reserved under this subchapter; or
27 (5) ~~[(4)]~~ a name that is registered under Subchapter

1 D.

2 (b) Subsection (a) does not apply if the other entity or the
3 person for whom the name is reserved or registered, as appropriate,
4 provides to the secretary of state a notarized written statement of
5 the entity's or person's consent to the subsequent reservation of
6 the ~~[similar]~~ name.

7 (c) If the secretary of state determines that an entity or
8 person described by Subsection (b) is consenting to the subsequent
9 reservation of a name that is the same as the name or fictitious
10 name of the entity or is the same as the name reserved or registered
11 for the entity or person, the entity's or person's consent is not
12 valid.

13 SECTION 5. Section 5.153, Business Organizations Code, is
14 amended to read as follows:

15 Sec. 5.153. LIMITATION ON THE REGISTRATION OF CERTAIN NAMES
16 ~~[REGISTRATIONS PROHIBITED; EXCEPTIONS]~~. (a) The secretary of
17 state may ~~[not]~~ register a name under this subchapter only if the
18 name ~~[that]~~ is distinguishable in the records of the secretary of
19 state from ~~[the same as, or that the secretary of state determines~~
20 ~~to be deceptively similar or similar to]~~:

21 (1) the name of an existing filing entity;

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

24 (3) the fictitious name under which a foreign filing
25 entity is registered to transact business in this state;

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

27 (5) [4] a name that is registered under this

1 subchapter.

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

3 (1) the other entity or the person for whom the name is
4 reserved or registered, as appropriate, provides to the secretary
5 of state a notarized written statement of the entity's or person's
6 consent to the registration of the ~~[similar]~~ name; or

7 (2) the applicant is a bank, trust company, savings
8 association, or insurance company that has been in continuous
9 existence from a date that precedes the date the indistinguishable
10 ~~[conflicting]~~ name is filed with the secretary of state.

11 (c) If the secretary of state determines that an entity or
12 person described by Subsection (b)(1) is consenting to the
13 registration of a name that is the same as the name or fictitious
14 name of the entity or is the same as the name reserved or registered
15 for the entity or person, the entity's or person's consent is not
16 valid.

17 SECTION 6. Section 9.105, Business Organizations Code, is
18 amended to read as follows:

19 Sec. 9.105. USE OF DISTINGUISHABLE NAME REQUIRED ~~[SIMILAR~~
20 ~~TO PREVIOUSLY REGISTERED NAME]~~. If the secretary of state
21 determines that the ~~[a foreign filing entity's]~~ name of a foreign
22 filing entity or the fictitious name under which it is registered to
23 transact business in this state does not comply with Chapter 5 ~~[is~~
24 ~~the same as, deceptively similar to, or similar to a name of a~~
25 ~~filing entity or foreign filing entity as provided by or reserved or~~
26 ~~registered under this code]~~, the secretary of state may not accept
27 for filing the certificate of reinstatement unless the foreign

1 filing entity contemporaneously amends its registration to change
2 its name to a name that complies with Chapter 5, or provides a
3 fictitious name under which the foreign filing entity will transact
4 business in this state that complies with Chapter 5 [~~obtains~~
5 ~~consent for the use of the similar name~~].

6 SECTION 7. Section 11.203, Business Organizations Code, is
7 amended to read as follows:

8 Sec. 11.203. USE OF DISTINGUISHABLE NAME REQUIRED [~~SIMILAR~~
9 ~~TO PREVIOUSLY REGISTERED NAME~~]. If the secretary of state
10 determines that a filing entity's name contained in a certificate
11 of reinstatement filed under Section 11.202 does not comply with
12 Chapter 5 [~~is the same as, deceptively similar to, or similar to a~~
13 ~~name of a filing entity or foreign entity on file as provided by or~~
14 ~~reserved or registered under this code~~], the secretary of state may
15 not accept for filing the certificate of reinstatement unless the
16 filing entity contemporaneously amends its certificate of
17 formation to change its name to a name that complies with Chapter 5
18 [~~or obtains consent for the use of the similar name~~].

19 SECTION 8. Section 5.002, Business Organizations Code, as
20 added by this Act, applies only to an application filed on or after
21 the effective date of this Act. An application filed before the
22 effective date of this Act is governed by the law in effect on the
23 date the application was filed, and the former law is continued in
24 effect for that purpose.

25 SECTION 9. Sections 5.102 and 5.153, Business Organizations
26 Code, as amended by this Act, apply only to an application for
27 registration or reservation of a name filed on or after the

1 effective date of this Act. An application for registration or
2 reservation of a name filed before the effective date of this Act is
3 governed by the law in effect on the date the application was filed,
4 and the former law is continued in effect for that purpose.

5 SECTION 10. Sections [9.105](#) and [11.203](#), Business
6 Organizations Code, as amended by this Act, apply only to a
7 certificate of reinstatement filed on or after the effective date
8 of this Act. A certificate of reinstatement filed before the
9 effective date of this Act is governed by the law in effect on the
10 date the certificate of reinstatement was filed, and the former law
11 is continued in effect for that purpose.

12 SECTION 11. This Act takes effect June 1, 2018.