

1-1 By: Villalba (Senate Sponsor - Estes) H.B. No. 2856
 1-2 (In the Senate - Received from the House May 10, 2017;
 1-3 May 12, 2017, read first time and referred to Committee on Business
 1-4 & Commerce; May 17, 2017, reported favorably by the following vote:
 1-5 Yeas 8, Nays 0; May 17, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Creighton	X			
1-9 Campbell	X			
1-10 Estes	X			
1-11 Nichols	X			
1-12 Schwertner			X	
1-13 Taylor of Galveston	X			
1-14 Whitmire	X			
1-15 Zaffirini	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to names of domestic and foreign filing entities for
 1-20 transacting business in this state.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 1.002, Business Organizations Code, is
 1-23 amended by adding Subdivision (21-a) and amending Subdivision (23)
 1-24 to read as follows:

1-25 (21-a) "Fictitious name" means an assumed name:

1-26 (A) that a foreign filing entity adopts for use
 1-27 because the name of the entity as stated in the entity's certificate
 1-28 of formation or similar organizational instrument is not available
 1-29 for use under the laws of this state; and

1-30 (B) under which the foreign filing entity is
 1-31 registered to transact business in this state, in accordance with
 1-32 Chapter 9.

1-33 (23) "Filing instrument" means an instrument,
 1-34 document, consent, or statement that is required or authorized by
 1-35 this code to be filed by or for an entity with the filing officer in
 1-36 accordance with Chapter 4.

1-37 SECTION 2. Subchapter A, Chapter 5, Business Organizations
 1-38 Code, is amended by adding Section 5.002 to read as follows:

1-39 Sec. 5.002. EVIDENCE OF ESTABLISHED RIGHT TO
 1-40 INDISTINGUISHABLE NAME. Notwithstanding Sections 5.053, 5.102,
 1-41 and 5.153, the secretary of state may accept a name if the entity or
 1-42 person seeking acceptance of the filing instrument with the
 1-43 indistinguishable name delivers to the secretary of state a
 1-44 certified copy of the final judgment of a court of competent
 1-45 jurisdiction that establishes the entity's or person's right to the
 1-46 name in this state.

1-47 SECTION 3. Section 5.053, Business Organizations Code, is
 1-48 amended to read as follows:

1-49 Sec. 5.053. DISTINGUISHABLE [IDENTICAL AND DECEPTIVELY
 1-50 SIMILAR] NAMES REQUIRED [PROHIBITED]. (a) The name of a [A] filing
 1-51 entity or the name under which [may not have a name, and] a foreign
 1-52 filing entity registers [may not register] to transact business in
 1-53 this state must be distinguishable in the records of the secretary
 1-54 of state from [under a name, that is the same as, or that the
 1-55 secretary of state determines to be deceptively similar or similar
 1-56 to]:

1-57 (1) the name of another existing filing entity;

1-58 (2) the name of a foreign filing entity that is
 1-59 registered under Chapter 9;

1-60 (3) the fictitious name under which a foreign filing
 1-61 entity is registered to transact business in this state;

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

2-4 (b) Subsection (a) does not apply if the other entity or the
 2-5 person for whom the name is reserved or registered, as appropriate,
 2-6 provides to the secretary of state a notarized written statement of
 2-7 the entity's or person's consent to the use of the ~~[similar]~~ name.

2-8 (c) Subsection (b) does not apply if the secretary of state
 2-9 determines that the names are the same.

2-10 SECTION 4. Section 5.102, Business Organizations Code, is
 2-11 amended to read as follows:

2-12 Sec. 5.102. LIMITATION ON THE RESERVATION OF CERTAIN NAMES
 2-13 [PROHIBITED; EXCEPTIONS]. (a) The secretary of state may ~~[not]~~
 2-14 reserve a name under this subchapter only if the name ~~[that]~~ is
 2-15 distinguishable in the records of the secretary of state from ~~[the~~
 2-16 same as, or that the secretary of state considers deceptively
 2-17 similar or similar to]:

2-18 (1) the name of an existing filing entity;

2-19 (2) the name of a foreign filing entity that is
 2-20 registered under Chapter 9;

2-21 (3) the fictitious name under which a foreign filing
 2-22 entity is registered to transact business in this state;

2-23 (4) a name that is reserved under this subchapter; or

2-24 (5) ~~(4)~~ a name that is registered under Subchapter
 2-25 D.

2-26 (b) Subsection (a) does not apply if the other entity or the
 2-27 person for whom the name is reserved or registered, as appropriate,
 2-28 provides to the secretary of state a notarized written statement of
 2-29 the entity's or person's consent to the subsequent reservation of
 2-30 the ~~[similar]~~ name.

2-31 (c) Subsection (b) does not apply if the secretary of state
 2-32 determines that the names are the same.

2-33 SECTION 5. Section 5.153, Business Organizations Code, is
 2-34 amended to read as follows:

2-35 Sec. 5.153. LIMITATION ON THE REGISTRATION OF CERTAIN NAMES
 2-36 [REGISTRATIONS PROHIBITED; EXCEPTIONS]. (a) The secretary of
 2-37 state may ~~[not]~~ register a name under this subchapter only if the
 2-38 name ~~[that]~~ is distinguishable in the records of the secretary of
 2-39 state from ~~[the same as, or that the secretary of state determines~~
 2-40 to be deceptively similar or similar to]:

2-41 (1) the name of an existing filing entity;

2-42 (2) the name of a foreign filing entity that is
 2-43 registered under Chapter 9;

2-44 (3) the fictitious name under which a foreign filing
 2-45 entity is registered to transact business in this state;

2-46 (4) a name that is reserved under Subchapter C; or

2-47 (5) ~~(4)~~ a name that is registered under this
 2-48 subchapter.

2-49 (b) Subsection (a) does not apply if:

2-50 (1) the other entity or the person for whom the name is
 2-51 reserved or registered, as appropriate, provides to the secretary
 2-52 of state a notarized written statement of the entity's or person's
 2-53 consent to the registration of the ~~[similar]~~ name; or

2-54 (2) the applicant is a bank, trust company, savings
 2-55 association, or insurance company that has been in continuous
 2-56 existence from a date that precedes the date the indistinguishable
 2-57 [conflicting] name is filed with the secretary of state.

2-58 (c) Subsection (b) does not apply if the secretary of state
 2-59 determines that the names are the same.

2-60 SECTION 6. Section 9.105, Business Organizations Code, is
 2-61 amended to read as follows:

2-62 Sec. 9.105. USE OF DISTINGUISHABLE NAME REQUIRED ~~[SIMILAR~~
 2-63 ~~TO PREVIOUSLY REGISTERED NAME].~~ If the secretary of state
 2-64 determines that the ~~[a foreign filing entity's]~~ name of a foreign
 2-65 filing entity or the fictitious name under which it is registered to
 2-66 transact business in this state does not comply with Chapter 5 ~~[is~~
 2-67 the same as, deceptively similar to, or similar to a name of a
 2-68 filing entity or foreign filing entity as provided by or reserved or
 2-69 registered under this code], the secretary of state may not accept

3-1 for filing the certificate of reinstatement unless the foreign
3-2 filing entity contemporaneously amends its registration to change
3-3 its name to a name that complies with Chapter 5, or provides a
3-4 fictitious name under which the foreign filing entity will transact
3-5 business in this state that complies with Chapter 5 [~~obtains~~
3-6 ~~consent for the use of the similar name~~].

3-7 SECTION 7. Section 11.203, Business Organizations Code, is
3-8 amended to read as follows:

3-9 Sec. 11.203. USE OF DISTINGUISHABLE NAME REQUIRED [~~SIMILAR~~
3-10 ~~TO PREVIOUSLY REGISTERED NAME~~]. If the secretary of state
3-11 determines that a filing entity's name contained in a certificate
3-12 of reinstatement filed under Section 11.202 does not comply with
3-13 Chapter 5 [~~is the same as, deceptively similar to, or similar to a~~
3-14 ~~name of a filing entity or foreign entity on file as provided by or~~
3-15 ~~reserved or registered under this code~~], the secretary of state may
3-16 not accept for filing the certificate of reinstatement unless the
3-17 filing entity contemporaneously amends its certificate of
3-18 formation to change its name to a name that complies with Chapter 5
3-19 [~~or obtains consent for the use of the similar name~~].

3-20 SECTION 8. This Act takes effect June 1, 2018.

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