

BILL ANALYSIS

Senate Research Center
87R27253 AJA-D

C.S.H.B. 1493
By: Herrero (Hinojosa)
State Affairs
5/20/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Administrative Code currently prohibits registration with the secretary of state (SOS) of an entity whose name falsely implies governmental affiliation. However, current law does not provide a path to reverse or eliminate a registration that was mistakenly allowed in violation of Rule Section 79.33, Administrative Code.

H.B. 1493 would provide a remedy for these situations. The bill would entitle an applicable governmental unit to enjoin another person's use of an entity name that falsely implies governmental affiliation. In addition, the bill would enable SOS, upon the written request of a governmental entity and after consultation with the attorney general, to determine within two years after SOS's acceptance of a filing instrument that a filing entity's name falsely implies an affiliation with a governmental entity.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1493 amends current law relating to the use of an entity name that falsely implies governmental affiliation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 2 (Sections 5.064 and 5.065, Business Organizations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 150C, as follows:

CHAPTER 150C. ENTITY NAME FALSELY IMPLYING GOVERNMENTAL AFFILIATION

Sec. 150C.001. DEFINITION. Defines "governmental unit."

Sec. 150C.002. FALSELY IMPLYING GOVERNMENTAL AFFILIATION. (a) Entitles a governmental unit to enjoin another person's use of an entity name that falsely implies governmental affiliation with the governmental unit.

(b) Provides that, in an action brought under this section, the governmental unit is entitled to injunctive relief throughout the state.

(c) Authorizes the court, if the court finds that the person against whom the injunctive relief is sought wilfully intended to imply governmental affiliation with the governmental unit, in the court's discretion, to award reasonable attorney's fees and court costs to the governmental unit.

SECTION 2. Amends Subchapter B, Chapter 5, Business Organizations Code, by adding Sections 5.064 and 5.065, as follows:

Sec. 5.064. NAME FALSELY IMPLYING GOVERNMENTAL AFFILIATION PROHIBITED. (a) Prohibits a filing entity or a foreign filing entity from using a name in this state that falsely implies an affiliation with a governmental entity.

(b) Provides that the submission of a filing instrument is an affirmation by the organizer or by a managerial official named in the filing instrument that the name provided as the name of the filing entity does not falsely imply an affiliation with a governmental entity.

(c) Provides that the addition of a word, phrase, or abbreviation that is required to be included in the name of a domestic or foreign filing entity under the provisions of Chapter 5 (Names of Entities; Registered Agents and Registered Offices) is not a factor in determining whether a name violates Subsection (a).

(d) Provides that, for purposes of this section, an entity name means:

(1) the name of a domestic filing entity, as evidenced by its certificate of formation, as amended or restated; or

(2) in the case of a foreign filing entity, the name of the foreign filing entity or the fictitious name of a foreign filing entity, as evidenced by its application for registration or its most recent amended registration.

(e) Requires the secretary of state (SOS) to adopt rules and prescribe procedures to implement this section.

Sec. 5.065. FALSE IMPLICATION OF GOVERNMENTAL AFFILIATION; AUTHORITY OF SECRETARY OF STATE AND ATTORNEY GENERAL. (a) Authorizes SOS, on the written request of a governmental entity, in SOS's discretion and after consultation with the attorney general, to determine within two years after SOS's acceptance of a filing instrument that a filing entity's or a foreign filing entity's name falsely implies an affiliation with a governmental affiliation in violation of Section 5.064.

(b) Requires SOS, if SOS determines under Subsection (a) that a filing entity's or foreign filing entity's name falsely implies an affiliation with a governmental entity, to notify the entity in writing of the need to amend the entity's name. Requires the entity, not later than the 60th day after the date SOS sends the notification required by this subsection, to:

(1) cease transacting business or operating under that name in this state; and

(2) file with SOS the applicable instrument to amend the entity's name as shown in the records of SOS.

(c) Requires SOS to provide the filing entity or foreign filing an entity an opportunity to respond to the notice sent under Subsection (b), including through the submission of documentation verifying that the filing entity is affiliated with the governmental entity.

(d) Requires SOS, if a filing entity or a foreign filing entity fails to take the action required by Subsection (b)(2), to notify the attorney general of the entity's failure to file the applicable filing instrument.

(e) Authorizes the attorney general to bring an action in the name of the state for injunctive relief to require compliance with this section.

(f) Authorizes an action under this section to be brought in a district court in Travis County.

(g) Authorizes the attorney general to recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, and investigatory costs.

(h) Requires SOS to adopt rules and prescribe procedures to implement this section.

(i) Authorizes SOS, notwithstanding Subsection (a), on the written request of a governmental entity, in SOS's discretion and after consultation with the attorney general, to determine within 10 years after SOS's acceptance of a filing instrument that a filing entity or a foreign filing entity's name falsely implies an affiliation with a governmental entity in violation of Section 5.064. Provides that a determination under this subsection is a determination under Subsection (a) for purposes of Subsection (b). Provides that this subsection expires August 31, 2022.

SECTION 3. Effective date: September 1, 2021.