

1 AN ACT

2 relating to the use of an entity name that falsely implies
3 governmental affiliation.

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

5 SECTION 1. Title 6, Civil Practice and Remedies Code, is
6 amended by adding Chapter 150C to read as follows:

7 CHAPTER 150C. ENTITY NAME FALSELY IMPLYING GOVERNMENTAL
8 AFFILIATION

9 Sec. 150C.001. DEFINITION. In this chapter, "governmental
10 unit" has the meaning assigned by Section 101.001.

11 Sec. 150C.002. FALSELY IMPLYING GOVERNMENTAL AFFILIATION.

12 (a) A governmental unit is entitled to enjoin another person's use
13 of an entity name that falsely implies governmental affiliation
14 with the governmental unit.

15 (b) In an action brought under this section, the
16 governmental unit is entitled to injunctive relief throughout the
17 state.

18 (c) If the court finds that the person against whom the
19 injunctive relief is sought wilfully intended to imply governmental
20 affiliation with the governmental unit, the court, in the court's
21 discretion, may award reasonable attorney's fees and court costs to
22 the governmental unit.

23 SECTION 2. Subchapter B, Chapter 5, Business Organizations
24 Code, is amended by adding Sections 5.064 and 5.065 to read as

1 follows:

2 Sec. 5.064. NAME FALSELY IMPLYING GOVERNMENTAL AFFILIATION
3 PROHIBITED. (a) A filing entity or a foreign filing entity may not
4 use a name in this state that falsely implies an affiliation with a
5 governmental entity.

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

10 (c) The addition of a word, phrase, or abbreviation that is
11 required to be included in the name of a domestic or foreign filing
12 entity under the provisions of this chapter is not a factor when
13 determining whether a name violates Subsection (a).

14 (d) For purposes of this section, an entity name means:

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

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

21 (e) The secretary of state shall adopt rules and prescribe
22 procedures to implement this section.

23 Sec. 5.065. FALSE IMPLICATION OF GOVERNMENTAL AFFILIATION;
24 AUTHORITY OF SECRETARY OF STATE AND ATTORNEY GENERAL. (a) On the
25 written request of a governmental entity specifying the basis on
26 which a filing entity's or foreign filing entity's name falsely
27 implies affiliation with the governmental entity, the secretary of

1 state may, in the secretary's reasonable discretion and after
2 consultation with the attorney general, determine not later than
3 the 30th day after the date of the secretary's acceptance of a
4 filing instrument that a filing entity's or a foreign filing
5 entity's name falsely implies an affiliation with a governmental
6 entity in violation of Section 5.064.

7 (b) If the secretary of state determines under Subsection
8 (a) that a filing entity's or foreign filing entity's name falsely
9 implies an affiliation with a governmental entity, the secretary of
10 state shall notify the entity in writing of the determination. The
11 secretary of state shall provide the filing entity or foreign
12 filing entity an opportunity to respond to the notice not later than
13 the 60th day after the date of the notice, including through the
14 submission of documentation verifying that the entity is affiliated
15 with the governmental entity or by demonstrating that the entity's
16 name does not falsely imply affiliation with the governmental
17 entity. The secretary of state shall make a final determination,
18 based on the filing entity's or foreign filing entity's response, as
19 to whether or not the entity's name falsely implies an affiliation
20 with a governmental entity.

21 (c) After making a final determination based on the filing
22 entity's or foreign filing entity's response under Subsection (b),
23 the secretary of state shall notify the filing entity or foreign
24 filing entity of the secretary's final determination. If the
25 entity does not timely respond to notice provided to the entity
26 under Subsection (b), the secretary's initial determination
27 becomes final. If the secretary of state finally determines that

1 the filing entity's or foreign filing entity's name falsely implies
2 an affiliation with a governmental entity, not later than the 90th
3 day after the date the secretary of state sends the notification
4 required by Subsection (b), the entity shall:

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

7 (2) file with the secretary of state the applicable
8 instrument to amend the entity's name as shown in the records of the
9 secretary of state.

10 (d) If a filing entity or a foreign filing entity fails to
11 take the action required by Subsection (c)(2), the secretary of
12 state shall notify the attorney general of the entity's failure to
13 file the applicable filing instrument.

14 (e) The attorney general may bring an action in the name of
15 the state for injunctive relief to require compliance with this
16 section.

17 (f) An action under this section may be brought in a
18 district court in Travis County.

19 (g) The attorney general may recover reasonable expenses
20 incurred in obtaining injunctive relief under this section,
21 including court costs, reasonable attorney's fees, and
22 investigatory costs.

23 (h) The secretary of state shall adopt rules and prescribe
24 procedures to implement this section.

25 (i) Notwithstanding Subsection (a), on the written request
26 of a governmental entity specifying the basis on which a filing
27 entity's or foreign filing entity's name falsely implies

1 affiliation with the governmental entity, the secretary of state
2 may, in the secretary's reasonable discretion and after
3 consultation with the attorney general, determine within eight
4 years after the secretary's acceptance of a filing instrument that
5 a filing entity's or a foreign filing entity's name falsely implies
6 an affiliation with a governmental entity in violation of Section
7 5.064. A determination made under this subsection is subject to
8 Subsections (b)-(g) to the same extent as a determination made
9 under Subsection (a). This subsection expires December 31, 2021.

10 SECTION 3. Not later than December 1, 2021, the secretary of
11 state shall adopt rules and prescribe procedures under Section
12 5.065(h), Business Organizations Code, as added by this Act.

13 SECTION 4. The secretary of state and the attorney general
14 retain the authority under Section 5.065, Business Organizations
15 Code, as added by this Act, to act on a written request by a
16 governmental entity under Section 5.065(i), Business Organizations
17 Code, as added by this Act, that is made before December 31, 2021.

18 SECTION 5. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 1493 was passed by the House on April 30, 2021, by the following vote: Yeas 126, Nays 15, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1493 on May 28, 2021, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1493 on May 30, 2021, by the following vote: Yeas 134, Nays 8, 3 present, not voting.

Chief Clerk of the House

H.B. No. 1493

I certify that H.B. No. 1493 was passed by the Senate, with amendments, on May 26, 2021, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1493 on May 30, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor