SENATE AMENDMENTS

2nd Printing

By: Herrero H.B. No. 1493

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 150C. ENTITY NAME FALSELY IMPLYING GOVERNMENTAL AFFILIATION

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

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

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

(c) If the court finds that the person against whom the injunctive relief is sought wilfully intended to imply governmental affiliation with the governmental unit, the court, in the court's discretion, may:

(1) enter judgment in an amount not to exceed three times the amount of the entity's profits and the governmental unit's damages; and

(2) award reasonable attorney's fees to the governmental unit.

SECTION 2. This Act takes effect September 1, 2021.

ADOPTED

MAY 26 2021

Secretary of the Senate

By: _____ H.B. No. 1493

Substitute the following for __.B. No. _____:

By: _____ C.S.__.B. No. _____

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 150C. ENTITY NAME FALSELY IMPLYING GOVERNMENTAL AFFILIATION

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

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

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

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

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

follows:

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

(b) 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) 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 this chapter is not a factor when determining whether a name violates Subsection (a).

(d) 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) The secretary of state shall 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) On the written request of a governmental entity, the secretary of state may, in the secretary's discretion and after consultation with the attorney general, determine within two years after the secretary'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 entity in violation of Section 5.064.

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

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

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

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

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

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

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

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

(i) Notwithstanding Subsection (a), on the written request of a governmental entity, the secretary of state may, in the secretary's discretion and after consultation with the attorney general, determine within 10 years after the secretary'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 entity in violation of Section 5.064. A determination under this subsection is a determination under Subsection (a) for purposes of Subsection (b). This subsection expires August 31, 2022.

SECTION 3. This Act takes effect September 1, 2021.

ADOPTED
MAY 26 2021
Patsy Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1 BY: J. J. Hinojosa

Amend C.S.H.B. No. 1493 (senate committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 5.065(a), Business Organizations Code (page 2, line 8), between "governmental entity" and the underlined comma, insert "specifying the basis on which a filing entity's name falsely implies affiliation with the governmental entity".

(2) In SECTION 2 of the bill, in added Section 5.065(a), Business Organizations Code (page 2, line 9), between "secretary's" and "discretion", insert "reasonable".

(3) In SECTION 2 of the bill, in added Section 5.065(a), Business Organizations Code (page 2, line 10), strike "within two years after the secretary's" and substitute "not later than the 30th day after the date of the secretary's".

(4) In SECTION 2 of the bill, in added Section 5.065(b), Business Organizations Code (page 2, line 18), strike "60th" and substitute "90th".

(5) In SECTION 2 of the bill, in added Section 5.065(c), Business Organizations Code (page 2, line 30), between "governmental entity" and the underlined period, insert "or by demonstrating that the filing entity's name does not falsely imply affiliation with the governmental entity".

(6) In SECTION 2 of the bill, in added Section 5.065(i), Business Organizations Code (page 2, line 47), between "governmental entity" and the underlined comma, insert "specifying the basis on which a filing entity's name falsely implies affiliation with the governmental entity".

(7) In SECTION 2 of the bill, in added Section 5.065(i), Business Organizations Code (page 2, line 48), between

"secretary's" and "discretion", insert "reasonable".

(8) In SECTION 2 of the bill, in added Section 5.065(i), Business Organizations Code (page 2, line 49), strike "10" and substitute "eight".

(9) In SECTION 2 of the bill, in added Section 5.065(i), Business Organizations Code (page 2, line 54), strike "August 31, 2022" and substitute "December 31, 2021".

(10) Add the following appropriately numbered SECTIONS to the bill and renumber SECTIONS of the bill accordingly:

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

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 27, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1493 by Herrero (Relating to the use of an entity name that falsely implies governmental affiliation.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code relating to entity names that might falsely imply governmental affiliation with a governmental unit. The bill provides that, in addition to granting injunctive relief, a court may award certain damages to the governmental unit in certain circumstances upon application by the Secretary of State (SOS) and following consultation with the Office of the Attorney General (OAG)

According to the SOS, the agency would need to update certain forms and adopt administrative rules. However, it anticipates that it would be able to undertake those actions using existing resources.

According to the OAG, the required review would be relatively narrow and the agency does not anticipate that it would require a significant resource commitment.

According to the Office of Court Administration, no significant fiscal impact to the state court system is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin, 302 Office of the Attorney General, 307 Secretary of State
LBB Staff: JMc, LBO, SMAT, GP, SLE, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 22, 2021

TO: Honorable Bryan Hughes, Chair, Senate Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1493 by Herrero (relating to the use of an entity name that falsely implies governmental affiliation.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code relating to entity names that might falsely imply governmental affiliation with a governmental unit. The bill provides that, in addition to granting injunctive relief, a court may award certain damages to the governmental unit in certain circumstances upon application by the Secretary of State (SOS) and following consultation with the Office of the Attorney General (OAG)

According to the SOS, the agency would need to update certain forms and adopt administrative rules. However, it anticipates that it would be able to undertake those actions using existing resources.

According to the OAG, the required review would be relatively narrow and the agency does not anticipate that it would require a significant resource commitment.

According to the Office of Court Administration, no significant fiscal impact to the state court system is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin, 302 Office of the Attorney General, 307 Secretary of State
LBB Staff: JMc, SMAT, GP, SLE, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 19, 2021

TO: Honorable Bryan Hughes, Chair, Senate Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB1493** by Herrero (Relating to the use of an entity name that falsely implies governmental affiliation.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code relating to entity names that might falsely imply governmental affiliation with a governmental unit. The bill provides that in addition to granting injunctive relief, a court may award monetary damages to the governmental unit in certain circumstances.

According to the Secretary of State, because the bill does not present any new filing requirements or require action by the agency, there is no fiscal impact on the agency.

According to the Office of Court Administration, no significant fiscal impact to the state court system is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin, 307 Secretary of State
LBB Staff: JMc, SMAT, SLE, LCO, GP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 22, 2021

TO: Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB1493** by Herrero (Relating to the use of an entity name that falsely implies governmental affiliation.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code relating to entity names that might falsely imply governmental affiliation with a governmental unit. The bill provides that in addition to granting injunctive relief, a court may award monetary damages to the governmental unit in certain circumstances.

According to the Secretary of State, because the bill does not present any new filing requirements or require action by the agency, there is no fiscal impact on the agency.

According to the Office of Court Administration, no significant fiscal impact to the state court system is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin, 307 Secretary of State
LBB Staff: JMc, SLE, LCO, GP