

House Bill 1493
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

No equivalent provision.

SENATE VERSION (IE)

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.

CONFERENCE

House Bill 1493
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(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 specifying the basis on which a filing entity's name falsely implies affiliation with the governmental entity, the secretary of state may, in the secretary's reasonable discretion and after consultation with the attorney general, determine not later than the 30th day after the date of 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. [FA1(1)-(3)]

(b) If the secretary of state determines under Subsection (a) that a filing entity's or foreign filing entity's name falsely

House Bill 1493
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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 90th day after the date the secretary of state sends the notification required by this subsection, the entity shall: [FA1(4)]

(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 or by demonstrating that the filing entity's name does not falsely imply affiliation with the governmental entity. [FA1(5)]

(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.

House Bill 1493
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(i) Notwithstanding Subsection (a), on the written request of a governmental entity specifying the basis on which a filing entity's name falsely implies affiliation with the governmental entity, the secretary of state may, in the secretary's reasonable discretion and after consultation with the attorney general, determine within eight 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 December 31, 2021. [FA1(6)-(9)]

No equivalent provision.

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. [FA1(10)]

No equivalent provision.

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. [FA1(10)]

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

SECTION 3. Same as House version.