

BILL ANALYSIS

Senate Research Center
85R17666 TSR-F

H.B. 2856
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties assert that making the process of selecting a distinguishable name for a business entity in Texas more uniform with the requirements established in other states would facilitate the formation of new business entities and expedite the registration of out-of-state business entities to transact business in Texas. H.B. 2856 provides for this increased uniformity.

H.B. 2856 amends current law relating to names of domestic and foreign filing entities for transacting business in this state.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.002, Business Organizations Code, by adding Subdivision (21-a) and amending Subdivision (23) to define “fictitious name” and redefine “filing instrument.”

SECTION 2. Amends Subchapter A, Chapter 5, Business Organizations Code, by adding Section 5.002, as follows:

Sec. 5.002. EVIDENCE OF ESTABLISHED RIGHT TO INDISTINGUISHABLE NAME. Authorizes the Texas secretary of state (SOS), notwithstanding Sections 5.053, 5.102, and 5.153, to register or reserve a name requested on an application for registration filed by a foreign filing entity, or an application for reservation or registration of a name filed by a person, that is not a distinguishable name from another name that is registered or reserved in the records of SOS under this chapter if the foreign filing entity or person delivers to SOS a certified copy of the final judgment of a court of competent jurisdiction that establishes the entity's or person's right to the name in this state.

SECTION 3. Amends Section 5.053, Business Organizations Code, as follows:

Sec. 5.053. New heading: DISTINGUISHABLE NAMES REQUIRED. (a) Requires the name of a filing entity or the name under which a foreign filing entity registers to transact business in this state to be distinguishable in the record of SOS from certain names, rather than prohibits a filing entity from having a name, and a foreign filing entity from registering to transact business in this state under a name that is the same as, or that SOS determines to be deceptively similar or similar to, certain names.

(b) Provides that Subsection (a) does not apply if the other certain entity or certain person, as appropriate, provides to SOS a notarized written statement of the entity's or person's consent to the use of the name, rather than similar name.

(c) Provides that Subsection (b) does not apply if SOS determines that the names are the same.

SECTION 4. Amends Section 5.102, Business Organizations Code, as follows:

Sec. 5.102. New heading: **LIMITATION ON THE RESERVATION OF CERTAIN NAMES.** (a) Authorizes SOS to reserve a name under this subchapter (Reservation of Names) only if the name is distinguishable in the records of SOS from certain names, rather than prohibits SOS from reserving a name that is the same as, or that SOS considers deceptively similar or similar to certain names.

(b) Provides that Subsection (a) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, provides to SOS a notarized written statement of the entity's or person's consent to the subsequent reservation of the name, rather than similar name.

(c) Provides that Subsection (b) does not apply if SOS determines that the names are the same.

SECTION 5. Amends Section 5.153, Business Organizations Code, as follows:

Sec. 5.153. New heading: **LIMITATION ON THE REGISTRATION OF CERTAIN NAMES.** (a) Authorizes SOS to register a name under this subchapter (Registration of Names) only if the name is distinguishable in the records of SOS from certain names, rather than prohibits SOS from registering a name that is the same as, or that SOS considers deceptively similar or similar to, certain names.

(b) Provides that Subsection (a) does not apply if:

(1) the other entity or the person for whom the name is reserved or registered, as appropriate, provides to SOS a notarized written statement of the entity's or person's consent to the registration of the name, rather than similar name; or

(2) the applicant is a bank, trust company, savings association, or insurance company that has been in continuous existence from a date that precedes the date the indistinguishable name, rather than the conflicting name, is filed with SOS.

(c) Provides that Subsection (b) does not apply if SOS determines that the names are the same.

SECTION 6. Amends Section 9.105, Business Organizations Code, as follows:

Sec. 9.105. New heading: **USE OF DISTINGUISHABLE NAME REQUIRED.** Prohibits SOS from, if SOS determines that the name of a foreign filing entity or the fictitious name under which it is registered to transact business in this state does not comply with Chapter 5 (Names of Entities; Registered Agents and Registered Offices), from accepting for filing the certificate of reinstatement unless the filing entity contemporaneously amends its registration to change its name to a name that complies with Chapter 5, or provides a fictitious name under which the foreign filing entity will transact business in this state that complies with Chapter 5, rather than prohibits SOS, if SOS determines that a foreign filing entity's name or the name under which it is registered to transact business in this state is the same as, deceptively similar to, or similar to a name of a filing entity or foreign filing entity as provided by or reserved or registered under this code, from accepting for filing the certificate of reinstatement unless the foreign filing entity amends its registration to change its name or obtains consent for the use of the similar name.

SECTION 7. Amends Section 11.203, Business Organizations Code, as follows:

Sec. 11.203. New heading: **USE OF DISTINGUISHABLE NAME REQUIRED.** Prohibits SOS, if SOS determines that a filing entity's name contained in a certificate of reinstatement filed under Section 11.202 (Procedures for Reinstatement) does not comply with Chapter 5, from accepting for filing the certificate of reinstatement unless the filing

entity contemporaneously amends its certificate of formation to change its name to a name that complies with Chapter 5, rather than prohibits SOS, if SOS determines that a filing entity's name contained in a certificate of reinstatement filed under Section 11.202 is the same as, deceptively similar to, or similar to a name of a filing entity or foreign entity on file as provided by or reserved or registered under this code, from accepting for filing the certificate of reinstatement unless the filing entity contemporaneously amends its certificate of formation to change its name or obtains consent for the use of the similar name.

SECTION 8. Effective date: June 1, 2018.