

BILL ANALYSIS

C.S.S.B. 275
By: Hinojosa
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current state law prohibits registration with the secretary of state of an entity whose name falsely implies governmental affiliation. However, there is no current path in statute to reverse a registration for an entity that was mistakenly allowed to register under a name implying a governmental affiliation. C.S.S.B. 275 seeks to address this issue by providing a remedy for governmental units to pursue if they believe an entity wilfully intended to imply governmental affiliation with that governmental unit.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTION 2 of this bill.

ANALYSIS

C.S.S.B. 275 amends the Civil Practice and Remedies Code to entitle an applicable governmental unit to enjoin another person's use of an entity name that falsely implies governmental affiliation with the governmental unit. The bill entitles the governmental unit to injunctive relief throughout Texas in such an action. If a court that finds that the person against whom the relief is sought wilfully intended to imply governmental affiliation, the court, in the court's discretion, may award reasonable attorney's fees and court costs to the governmental unit.

C.S.S.B. 275 amends the Business Organizations Code to prohibit a filing entity or a foreign filing entity from using a name in Texas that falsely implies an affiliation with a governmental entity. The bill establishes that the addition of a word, phrase, or abbreviation that is required to be included in the entity's name is not a factor when determining whether the name violates the prohibition. The bill establishes 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 that affiliation. An entity name means the following:

- the name of a domestic filing entity, as evidenced by its certificate of formation, as amended or restated; or
- 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.

The bill requires the secretary of state to adopt rules and prescribe procedures to implement these provisions.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 275 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute does not include an authorization present in the engrossed for a court, on the finding that a person against whom injunctive relief is sought wilfully intended to imply governmental affiliation with a governmental unit, to enter judgment in an amount not to exceed three times the amount of the entity's profits and the governmental unit's damages. However, the substitute includes an authorization absent from the engrossed for the court, on such a finding, to award court costs to the governmental unit.

While both the engrossed and substitute prohibit a filing entity or a foreign filing entity from using a name in Texas that falsely implies an affiliation with a governmental entity, the substitute does not include the following provisions, which were present in the engrossed:

- an authorization for the secretary of state, in the secretary's sole discretion, to determine at any time that an entity's name violates the prohibition;
- a requirement for the secretary of state to notify the entity if the name is determined to be in violation;
- a requirement for an entity that receives such notice to cease transacting business or operating under that name in Texas and to amend the name;
- a provision establishing a maximum civil penalty of \$1,000 for each violation of the requirements to cease transacting business or operating under the applicable name in Texas and to amend the name; and
- a provision relating to the attorney general's authority to bring an action in the name of the state to recover the civil penalty or for injunctive relief to require compliance and a provision authorizing the attorney general to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, including court costs, reasonable attorney's fees, and investigatory costs.

Furthermore, the substitute includes the following provisions, which were absent from the engrossed:

- a provision establishing 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;
- a provision establishing 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 is not a factor when determining whether a name violates the prohibition against the use of a name that falsely implies affiliation with a governmental entity;
- a provision specifying what an entity name means for purposes of the prohibition on the use of a name falsely implying a governmental affiliation; and
- a requirement for the secretary of state to adopt rules and prescribe procedures to implement the prohibition.