

SUBJECT: Filing requirements for operating under a professional or assumed name

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 9 ayes — Brimer, Rhodes, Corte, Dukes, Elkins, Giddings, Janek,
Solomons, Woolley

0 nays

WITNESSES: For — None

Against — None

On — Carmen Flores, Texas Secretary of State

BACKGROUND : Businesses operating under an assumed or professional name in Texas must register the assumed name with the secretary of state and with the clerk of any county in which the business maintains a registered agent for service of process. Registrations must be signed and notarized.

Under the Penal Code, tampering with a governmental record is a criminal offense. Depending on the type of document and the actor's intent, the offense can be punished with penalties ranging from a Class A misdemeanor (maximum one year in jail and a \$4,000 penalty) to a second degree felony (two to 20 years in prison and optional fine of up to \$10,000).

DIGEST: HB 2570 would allow the secretary of state to accept photocopied registration forms and forms sent by facsimile. It would provide that a reproduced copy of a signature would be valid for filing such documents and would remove the requirement that such signatures be notarized.

HB 2570 would allow penalties to be imposed for fraudulent filing when the person “knowingly or intentionally” signed and filed a required or authorized document that falsely showed that the person signing it had authority to act on behalf of the entity for which the document was presented, contained a material false statement, or was forged. A violations would be punished as the offense of tampering with a governmental record.

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HB 2570 would take effect September 1, 1997 and would apply offenses committed on or after the effective date.

SUPPORTERS
SAY:

HB 2570 would help to streamline and simplify the filing of assumed name registrations, in large part by removing the requirements that these documents be notarized. Allowing copied or faxed registration forms would help entities avoid having to pay an attorney to draft documents and file them in Austin and the required counties. These changes would allow the Secretary of State's Office to adjust its filing procedures to keep pace with the changes experienced by the business world during the last decade.

The penalties that would be added for filing fraudulent documents are needed to conform to other laws protecting government records. Because a much less stringent standard would be used to allow filing of the registration, the penalties for filing a false registration must be severe enough to discourage any fraudulent filings.

OPPONENTS
SAY:

No apparent opposition.