

SUBJECT: Requirements for filing certain information with the Secretary of State

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Brimer, Dukes, Corte, Elkins, Giddings, Solomons, Woolley
0 nays
2 absent — J. Davis, George

WITNESSES: For — none
Against — none
On — Carmen Flores, Texas Secretary of State; Larry Niemann, Community Association Institute (Austin Chapter)

BACKGROUND: Out-of-state corporations that conduct business in Texas must register with the secretary of state and secure a registered agent. Problems arise when out-of-state corporations cease to conduct business in the state or change registered agents without notifying the secretary of state. Under current law, the secretary of state only may penalize a corporation by canceling the corporation's charter.

DIGEST: CSHB 2187 would amend the Texas Business Corporation Act, art. 9.07 to add that a person who was required to file a change of registered office or agent, an application or a certificate of withdrawal or termination, or articles of dissolution with the secretary of state would commit an offense if that person did not file the documents before the 30th day after the date of the change, withdrawal, or termination or the date the filing was otherwise required by law, whichever was earlier. Violators would be liable to the state for civil penalties not to exceed \$2,500 for each violation.

The attorney general or the prosecuting attorney in the county in which the violation occurred could bring suit to recover the civil penalty. In addition, the attorney general could bring an action in the name of the state to restrain or enjoin a person from violation these provisions. In determining the amount

of a penalty, a court would have to consider all the circumstances giving rise to the offense.

In an action or proceeding brought against a person who had not complied, the plaintiff or other party could recover expenses incurred, including attorney's fees, in locating and effecting service of process on the person. A person who brought an action or proceeding against another person for damages incurred as a result of noncompliance could request from the attorney general nonconfidential information on the other person for the purpose of effecting service of process. The attorney general would comply with a request made regarding these provisions to the extent practicable.

This bill would take effect September 1, 2001.

NOTES:

The committee substitute differs from the original bill by amending the Business Corporation Act rather than the Government Code, thereby making the substitute's provisions applicable only to corporations; the original bill would have applied to any type of collective business organization. The substitute would extend the filing deadline from 11 days to 30 days after the date of the change, withdrawal, or termination for a person who was required to file documentation. Also, the substitute would decrease the civil penalty from an amount not to exceed \$10,000 to one not to exceed \$2,500. The substitute would authorize steps to redress a violation of the bill's provisions, including suit brought by the attorney general.