

**SUBJECT:** Requiring consent to be designated as registered agent

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 7 ayes — Deshotel, Elkins, Gattis, Keffer, Orr, Quintanilla, S. Turner  
0 nays  
4 absent — Christian, England, Giddings, S. Miller

**WITNESSES:** For — (*Registered, but did not testify:* Val Perkins, Texas Business Law Foundation)  
Against — None

**BACKGROUND:** Business Organizations Code, ch. 5 requires certain entities doing business in the state to designate a registered agent and registered office to serve as the entity's representative to receive any process, notice, or demand required or permitted by law to be served.

Sec. 5.251 allows the secretary of state to be served if the entity fails to designate a registered agent, the registered agent cannot be located after diligent search, or an out-of-state entity has its registration with the Secretary of state to do business in Texas revoked or conducts business in Texas without secretary of state registration.

Business Organization Code, sec. 4.007 allows recovery of damages, court costs, and reasonable attorney's fees if a person incurs a loss because of a forged document filed with the Secretary of State's Office. Sec. 4.008 provides criminal penalties for filing or directing a filing with the secretary of state of a document known to be materially false. An offense under this section is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) unless the actor's intent is to defraud or harm another, in which event the offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

**DIGEST:** CSHB 1787 would amend Business Organizations Code, ch. 5 to require that a person or other entity designated to serve as a registered agent have consented to serve in that capacity. If a person who was a registered agent

before the sale, acquisition or transfer of interest of the represented entity continued to serve in that capacity after the sale, acquisition or transfer, the continuation of service would be affirmation of verification that the registered agent had consented to serve.

CSHB 1787 would allow a registered agent to terminate that relationship by filing a statement rejecting the appointment. The statement would have to:

- be signed by the person named as the registered agent;
- contain the name of the represented entity; and
- include a statement that the person did not consent to be the registered agent on the date listed on the corporations filing with the Secretary of state.

Upon acceptance of the statement by the secretary of state, the designation as registered agent would be terminated, and the secretary of state would have to notify the corporation that it needed to designate a new registered agent.

A false statement designating a registered agent would be subject to the civil and criminal penalties under Business Organizations Code, secs. 4.007 and 4.008. A person who was designated or appointed as a registered agent would not be liable for the debts, liabilities, or obligations of the represented entity solely because of the designation as a registered agent. A person designated as a registered agent without that person's consent would not be liable for failure or refusal to perform the duties as a registered agent to receive and forward legal processes and other documents.

Other provisions would define the duties of a registered agent and add definitions for registered agent filings.

The bill would take effect January 1, 2010, and would apply only to designations or appointments of designated agents made on after that date.

**SUPPORTERS  
SAY:**

CSHB 1787 would clarify that individuals or organizations designated as registered agents without their knowledge or consent would not be liable as parties to litigation or for a failure to forward the legal papers served in a legal dispute. The bill would provide a clear way to resign the designation and provide for civil and criminal penalties for those who

knowingly filed materially false documents to designate registered agents. The bill also would help plaintiffs avoid wasting time by serving legal notices with someone who had not agreed to be a registered agent and would be unlikely to be able to forward the legal papers to the intended defendant.

The bill also would provide legislative guidance on the question of the liability of the Secretary of state when that officer became a registered agent by default. The Secretary of state probably already has this exemption from liability, but the law should make it explicit.

Designation of entities as registered agents without their knowledge or consent has happened several times in Texas, including to some of the largest firms that serve as designated agents.

**OPPONENTS  
SAY:**

CSHB 1787 does not appear to fix any substantial problem because few cases seem to occur of designating registered agents without their knowledge.

**NOTES:**

Rep. Solomons is expected to offer a floor amendment that would require a registered agent to receive and accept as well as forward legal papers on behalf of the represented entity.

The committee substitute differs from the bill as filed by adding provisions on the process for rejecting a designation as a registered agent; modifying provisions on the application of civil and criminal penalties and on liability limitations for a registered agent; and adding definitions for registered agent filings. The substitute also changed the proposed effective date from September 1, 2009, to January 1, 2010.