CHAPTER 547

S.B. No. 1699

AN ACT
relating to consistency among certain secretary of state filings.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsections (a) and (b), Section 9.525, Business & Commerce Code, are amended to read as follows:

(a) Except as otherwise provided in Subsections (e) and (f), the fee for filing and indexing a record under this subchapter, other than an initial financing statement of the kind described in Subsection (b), is:

(1) $15 if the record is communicated in writing and consists of one or two pages;
(2) $30 if the record is communicated in writing and consists of more than two pages; and
(3) $5 if the record is communicated by another medium authorized by filing-office rule.

(b) Except as otherwise provided in Subsection (e), the fee for filing and indexing an initial financing statement of the following kinds is:

(1) $60 if the financing statement indicates that it is filed in connection with a public-finance transaction;
(2) $60 if the financing statement indicates that it is filed in connection with a manufactured-home transaction; and
(3) $60 if the debtor is a transmitting utility.

SECTION 2. Subsection (b), Section 9.526, Business & Commerce Code, is amended to read as follows:

(b) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this subchapter, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this subchapter, the Secretary of State, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing filing-office rules, shall:

(1) consult with filing offices in other jurisdictions that enact substantially this subchapter;
(2) consult the most recent version of the Model Administrative Rules promulgated by the International Association of Commercial Administrators or any successor organization; and
(3) take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this subchapter.

SECTION 3. Section 9.527, Business & Commerce Code, is amended to read as follows:

Sec. 9.527. DUTY TO REPORT. The Secretary of State shall report before January 1 of each odd-numbered year to the Legislature on the operation of the filing office. The report must contain a statement of the extent to which:

(1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this subchapter and the reasons for these variations; and
(2) the filing-office rules are not in harmony with the most recent version of the Model Administrative Rules promulgated by the International Association of Commercial [Corporation] Administrators, or any successor organization, and the reasons for these variations.

SECTION 4. Subsection (b), Section 261.009, Business & Commerce Code, is amended to read as follows:

(b) The amount of the fee for a certificate under this section is:

(1) $10, if the same as the amount of the fee provided by Section 9.525(d) [request for the certificate is in the standard form prescribed by the secretary of state]; or

(2) $25, if the request is not in the standard form.

SECTION 5. Subsection (b), Section 261.010, Business & Commerce Code, is amended to read as follows:

(b) The fee for a copy under this section is in the amount provided by Section 405.031, Government Code [$1.50 per page, but may not be less than $5 or more than $100 for each request concerning a particular utility].

SECTION 6. Subsection (b), Section 128.031, Agriculture Code, is amended to read as follows:

(b) The amount of the fee for a certificate under Subsection (a) is the same as the amount of the fee provided by Section 9.525(d), Business & Commerce Code [shall be established by the secretary of state in an amount necessary to cover the cost of administering this section].

SECTION 7. Subsection (b), Section 128.032, Agriculture Code, is amended to read as follows:

(b) The fee for a copy of a notice of claim of lien obtained under Subsection (a) is in the amount provided by Section 405.031, Government Code [shall be established by the secretary of state in an amount necessary to cover the cost of administering this section].

SECTION 8. Subsection (b), Section 188.031, Agriculture Code, is amended to read as follows:

(b) The amount of the fee for a certificate under Subsection (a) is the same as the amount of the fee provided by Section 9.525(d), Business & Commerce Code [shall be established by the secretary of state in an amount necessary to cover the cost of administering this section].

SECTION 9. Subsection (b), Section 188.032, Agriculture Code, is amended to read as follows:

(b) The fee for a copy of a notice of claim of lien obtained under Subsection (a) is in the amount provided by Section 405.031, Government Code [shall be established by the secretary of state in an amount necessary to cover the cost of administering this section].

SECTION 10. Section 14.004, Property Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on a [the] date and time specified by the filing office, but not a date earlier than three business days before the date the filing office receives the request [hour stated therein], any notice of lien or certificate or notice affecting any lien filed under this chapter or filed under the Uniform Federal Tax Lien Registration Act (Subchapter C, Chapter 113, Tax Code) on or after January 1, 1972, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The amount of the fee for a certificate is the same as the amount of the fee provided by Section 9.525(d), Business & Commerce Code [$10]. Upon request, the filing officer shall furnish a copy of any notice of federal lien. The fee for a copy furnished under this section is in the amount provided by Section 405.031, Government Code, or notice or certificate affecting a federal lien, for a fee of $1.50 per page.

(e) Section 9.523, Business & Commerce Code, applies to a federal lien filed under this chapter.

SECTION 11. This Act takes effect September 1, 2009.

Passed the Senate on April 23, 2009: Yeas 30, Nays 0; passed the House on May 26, 2009: Yeas 145, Nays 0, two present not voting.
CHAPTER 548
S.B. No. 1701

AN ACT
relating to the franchise arrangements excluded from the Business Opportunity Act.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (b), Section 51.003, Business & Commerce Code, as effective April 1, 2009, is amended to read as follows:

(b) In this chapter, “business opportunity” does not include:

(1) the sale or lease of an established and ongoing business or enterprise that has actively conducted business before the sale or lease, whether composed of one or more than one component business or enterprise, if the sale or lease represents an isolated transaction or series of transactions involving a bona fide change of ownership or control of the business or enterprise or liquidation of the business or enterprise;

(2) a sale by a retailer of goods or services under a contract or other agreement to sell the inventory of one or more ongoing leased departments to a purchaser who is granted the right to sell the goods or services within or adjoining a retail business establishment as a department or division of the retail business establishment;

(3) a transaction that is:

(A) regulated by the Texas Department of Licensing and Regulation, the Texas Department of Insurance, the Texas Real Estate Commission, or the director of the Motor Vehicle Division of the Texas Department of Transportation; and

(B) engaged in by a person licensed by one of those agencies;

(4) a real estate syndication;

(5) a sale or lease to a business enterprise that also sells or leases products, equipment, or supplies or performs services:

(A) that are not supplied by the seller; and

(B) that the purchaser does not use with the seller's products, equipment, supplies, or services;

(6) the offer or sale of a franchise as described by the Petroleum Marketing Practices Act (15 U.S.C. Section 2801 et seq.) and its subsequent amendments;

(7) the offer or sale of a business opportunity if the seller:

(A) has a net worth of $25 million or more according to the seller's audited balance sheet as of a date not earlier than the 13th month before the date of the transaction; or

(B) is at least 80 percent owned by another person who:

(i) in writing unconditionally guarantees performance by the person offering the business opportunity plan; and

(ii) has a net worth of more than $25 million according to the person's most recent audited balance sheet as of a date not earlier than the 13th month before the date of the transaction; or

(8) an arrangement defined as a franchise by 16 C.F.R. Part 436 [Section 436.2(a)] and its subsequent amendments if:

(A) the franchisor complies in all material respects in this state with 16 C.F.R. Part 436 and each order or other action of the Federal Trade Commission; and

(B) before offering for sale or selling a franchise in this state, a person files with the secretary of state a notice containing:

1252