

BILL ANALYSIS

Senate Research Center
76R5768 DWS-F

H.B. 1351
By: Woolley (Shapiro)
State Affairs
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Engrossed

DIGEST

Currently, Texas law requires corporations, limited partnerships, and limited liability partnerships, or limited liability companies which use an assumed name, to file a certificate with the secretary of state or a county clerk of the proper county. The certificate must be executed and acknowledged by an officer, general manager, member, representative, or attorney in fact, regardless of where the certificate is filed. Deleting the requirement of acknowledgment may result in more efficient review and processing of certificates and greater consistency in all documents filed with the secretary of state. However, county officials have expressed concern over the removal of the notarization requirement. This bill would make a distinction between certificates filed in the office of the secretary of state and those filed in a county clerk's office by prescribing two distinct procedures, allowing the secretary of state to accept reproduced copies of signed original documents, and creating an offense for the submission of false or fraudulent documents.

PURPOSE

As proposed, H.B. 1351 sets forth guidelines for the execution and filing of assumed name certificates and provides penalties for violations of this Act.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.11(b), Business & Commerce Code, to require a certificate filed in the office of the Secretary of State to be executed by certain persons, rather than duly acknowledged. Requires a certificate filed in the office of the county clerk to be executed and acknowledged in the manner provided by Section 36.10(b) of this code.

SECTION 2. Amends Section 36.13, Business & Commerce Code, as follows:

Sec. 36.13. New heading: DURATION AND RENEWAL OF CERTIFICATE. Deletes a provision regarding an assumed name certificate. Deletes a provision requiring a county clerk to notify certain persons.

SECTION 3. Amends Chapter 36B, Business & Commerce Code, by adding Section 36.18, as follows:

Sec. 36.18. FILING OF REPRODUCTION. Authorizes the secretary of state to accept a photographic, photostatic, or similarly reproduced copy of a signed original document required or authorized to be filed in the office of the secretary of state. Authorizes a signature on a document to be filed with the secretary of state to be a facsimile.

SECTION 4. Amends Section 36.26, Business & Commerce Code, as follows:

Sec. 36.26. New heading: CRIMINAL PENALTY -- GENERAL VIOLATION. Provides that a person who conducts business or renders a professional service under an assumed name and intentionally violates a provision of this chapter commits an offense. Provides that an offense under this section is a Class A misdemeanor. Deletes text regarding a penalty for violating provisions of this chapter.

SECTION 5. Amends Chapter 36C, Business & Commerce Code, by adding Section 36.27, as follows:

Sec. 36.27. CRIMINAL PENALTY -- FRAUDULENT FILING. Prohibits a person from knowingly or intentionally signing and presenting for filing a document that falsely grants authority to a person signing the document, contains material false statements, or is forged. Provides that a person who violates Subsection (a) commits an offense, punishable under Section 37.10, Penal Code.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 1999.

SECTION 8. Emergency clause.