

BILL ANALYSIS

Senate Research Center

S.B. 1313
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Business Organizations Code requires certain corporate entities—known as “filing entities” or “foreign filing entities”—to file either a certificate of formation or a registration with the Secretary of State (SOS) in order to operate in Texas. The code further provides that filing entities and foreign filing entities may not have an identical or deceptively similar name as another filing entity, a foreign filing entity, a name that is reserved with SOS, or a name that is registered with SOS unless the other entity consents in writing to the use of the name.

Unfortunately, current law does little to protect existing entities in this process. More specifically, if a filing entity or foreign filing entity includes a forged document that purports to grant it the requisite permission from an existing entity, SOS is not required to take any steps to verify the permission. Furthermore, the only way that existing entities can guard against such infringements is to subscribe to and regularly check SOSDirect, an online database of business documents maintained by SOS. Lastly, even if an existing entity becomes aware of a forgery, it likely will have a difficult time convincing a law enforcement agency to prosecute the crime.

S.B. 1313 seeks to address these concerns by deterring filing entities and foreign filing entities from fraudulently claiming they have obtained an existing entity’s consent to use the same or a similar name. S.B. 1313 does this by requiring filing entities and foreign filing entities to submit notarized, written consent from an existing entity.

S.B. 1313 amends current law relating to the names of certain businesses.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.053(b), Business Organizations Code, to provide that Subsection (a) (prohibiting a filing entity from having a similar or deceptively similar name) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, provides to the secretary of state (SOS) a notarized written statement of the entity's or person's consent to the use of the similar name, rather than to provide that Subsection (a) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, consents in writing to the use of the similar name.

SECTION 2. Amends Section 5.102(b), Business Organizations Code, to provide that Subsection (a) (prohibiting SOS from reserving a same or deceptively similar name) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, provides to SOS a notarized written statement of the entity's or person's consent to the subsequent reservation of the similar name, rather than consents in writing to the subsequent reservation of the similar name.

SECTION 3. Amends Section 5.153(b), Business Organizations Code, to provide that Subsection (a) (prohibiting SOS from reserving a same or deceptively similar name) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, provides

to SOS a notarized written statement of the entity's or person's consent to the registration of the similar name, rather than consents in writing to the registration of the similar name.

SECTION 4. Effective date: upon passage or September 1, 2015.