

## Chapter 503

H.B. No. 2856

### AN ACT

relating to names of domestic and foreign filing entities for transacting business in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.002, Business Organizations Code, is amended by adding Subdivision (21-a) and amending Subdivision (23) to read as follows:

(21-a) "Fictitious name" means an assumed name:

(A) that a foreign filing entity adopts for use because the name of the entity as stated in the entity's certificate of formation or similar organizational instrument is not available for use under the laws of this state; and

(B) under which the foreign filing entity is registered to transact business in this state, in accordance with Chapter 9.

(23) "Filing instrument" means an instrument, document, consent, or statement that is required or authorized by this code to be filed by or for an entity with the filing officer in accordance with Chapter 4.

SECTION 2. Subchapter A, Chapter 5, Business Organizations Code, is amended by adding Section 5.002 to read as follows:

Sec. 5.002. EVIDENCE OF ESTABLISHED RIGHT TO INDISTINGUISHABLE NAME. Notwithstanding Sections 5.053, 5.102, and 5.153, the secretary of state may accept a name if the entity or

1 person seeking acceptance of the filing instrument with the  
2 indistinguishable name delivers to the secretary of state a  
3 certified copy of the final judgment of a court of competent  
4 jurisdiction that establishes the entity's or person's right to the  
5 name in this state.

6 SECTION 3. Section 5.053, Business Organizations Code, is  
7 amended to read as follows:

8 Sec. 5.053. DISTINGUISHABLE [~~IDENTICAL AND DECEPTIVELY~~  
9 ~~SIMILAR~~] NAMES REQUIRED [~~PROHIBITED~~]. (a) The name of a [A] filing  
10 entity or the name under which [~~may not have a name, and~~] a foreign  
11 filing entity registers [~~may not register~~] to transact business in  
12 this state must be distinguishable in the records of the secretary  
13 of state from [~~under a name, that is the same as, or that the~~  
14 ~~secretary of state determines to be deceptively similar or similar~~  
15 ~~to~~]:

16 (1) the name of another existing filing entity;

17 (2) the name of a foreign filing entity that is  
18 registered under Chapter 9;

19 (3) the fictitious name under which a foreign filing  
20 entity is registered to transact business in this state;

21 (4) a name that is reserved under Subchapter C; or

22 (5) [~~4~~] a name that is registered under Subchapter

23 D.

24 (b) Subsection (a) does not apply if the other entity or the  
25 person for whom the name is reserved or registered, as appropriate,  
26 provides to the secretary of state a notarized written statement of  
27 the entity's or person's consent to the use of the [~~similar~~] name.

1        (c) Subsection (b) does not apply if the secretary of state  
2 determines that the names are the same.

3        SECTION 4. Section 5.102, Business Organizations Code, is  
4 amended to read as follows:

5        Sec. 5.102. LIMITATION ON THE RESERVATION OF CERTAIN NAMES  
6 ~~[PROHIBITED, EXCEPTIONS]~~. (a) The secretary of state may ~~[not]~~  
7 reserve a name under this subchapter only if the name ~~[that]~~ is  
8 distinguishable in the records of the secretary of state from ~~[the~~  
9 ~~same as, or that the secretary of state considers deceptively~~  
10 ~~similar or similar to]~~:

11            (1) the name of an existing filing entity;

12            (2) the name of a foreign filing entity that is  
13 registered under Chapter 9;

14            (3) the fictitious name under which a foreign filing  
15 entity is registered to transact business in this state;

16            (4) a name that is reserved under this subchapter; or

17            (5) [4] ~~[4]~~ a name that is registered under Subchapter

18 D.

19        (b) Subsection (a) does not apply if the other entity or the  
20 person for whom the name is reserved or registered, as appropriate,  
21 provides to the secretary of state a notarized written statement of  
22 the entity's or person's consent to the subsequent reservation of  
23 the ~~[similar]~~ name.

24        (c) Subsection (b) does not apply if the secretary of state  
25 determines that the names are the same.

26        SECTION 5. Section 5.153, Business Organizations Code, is  
27 amended to read as follows:

1           Sec. 5.153. LIMITATION ON THE REGISTRATION OF CERTAIN NAMES  
2 ~~[REGISTRATIONS PROHIBITED, EXCEPTIONS]~~. (a) The secretary of  
3 state may ~~[not]~~ register a name under this subchapter only if the  
4 name ~~[that]~~ is distinguishable in the records of the secretary of  
5 state from ~~[the same as, or that the secretary of state determines~~  
6 ~~to be deceptively similar or similar to]~~:

7                   (1) the name of an existing filing entity;

8                   (2) the name of a foreign filing entity that is  
9 registered under Chapter 9;

10                  (3) the fictitious name under which a foreign filing  
11 entity is registered to transact business in this state;

12                  (4) a name that is reserved under Subchapter C; or

13                  (5) ~~[4]~~ a name that is registered under this  
14 subchapter.

15           (b) Subsection (a) does not apply if:

16                   (1) the other entity or the person for whom the name is  
17 reserved or registered, as appropriate, provides to the secretary  
18 of state a notarized written statement of the entity's or person's  
19 consent to the registration of the ~~[similar]~~ name; or

20                   (2) the applicant is a bank, trust company, savings  
21 association, or insurance company that has been in continuous  
22 existence from a date that precedes the date the indistinguishable  
23 ~~[conflicting]~~ name is filed with the secretary of state.

24           (c) Subsection (b) does not apply if the secretary of state  
25 determines that the names are the same.

26           SECTION 6. Section 9.105, Business Organizations Code, is  
27 amended to read as follows:

1           Sec. 9.105. USE OF DISTINGUISHABLE NAME REQUIRED [~~SIMILAR~~  
2 ~~TO PREVIOUSLY REGISTERED NAME~~]. If the secretary of state  
3 determines that the [~~a foreign filing entity's~~] name of a foreign  
4 filing entity or the fictitious name under which it is registered to  
5 transact business in this state does not comply with Chapter 5 [~~is~~  
6 ~~the same as, deceptively similar to, or similar to a name of a~~  
7 ~~filing entity or foreign filing entity as provided by or reserved or~~  
8 ~~registered under this code~~], the secretary of state may not accept  
9 for filing the certificate of reinstatement unless the foreign  
10 filing entity contemporaneously amends its registration to change  
11 its name to a name that complies with Chapter 5, or provides a  
12 fictitious name under which the foreign filing entity will transact  
13 business in this state that complies with Chapter 5 [~~obtains~~  
14 ~~consent for the use of the similar name~~].

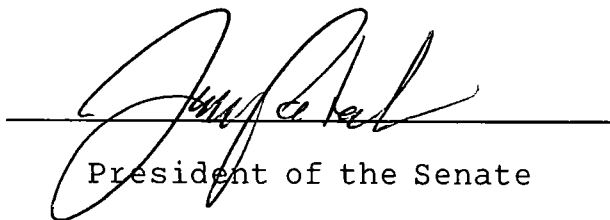
15           SECTION 7. Section 11.203, Business Organizations Code, is  
16 amended to read as follows:

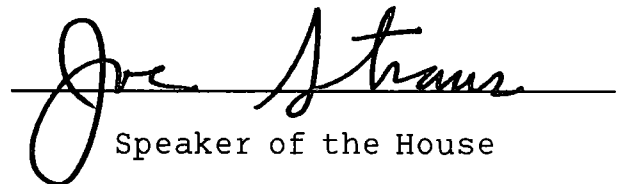
17           Sec. 11.203. USE OF DISTINGUISHABLE NAME REQUIRED [~~SIMILAR~~  
18 ~~TO PREVIOUSLY REGISTERED NAME~~]. If the secretary of state  
19 determines that a filing entity's name contained in a certificate  
20 of reinstatement filed under Section 11.202 does not comply with  
21 Chapter 5 [~~is the same as, deceptively similar to, or similar to a~~  
22 ~~name of a filing entity or foreign entity on file as provided by or~~  
23 ~~reserved or registered under this code~~], the secretary of state may  
24 not accept for filing the certificate of reinstatement unless the  
25 filing entity contemporaneously amends its certificate of  
26 formation to change its name to a name that complies with Chapter 5  
27 [~~or obtains consent for the use of the similar name~~].

H.B. No. 2856

1       SECTION 8.   This Act takes effect June 1, 2018.

H.B. No. 2856

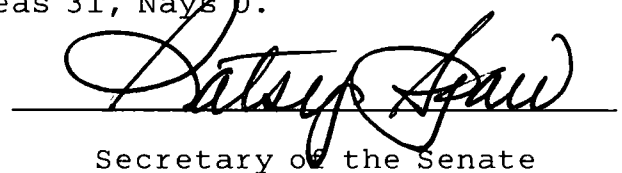
  
President of the Senate

  
Speaker of the House

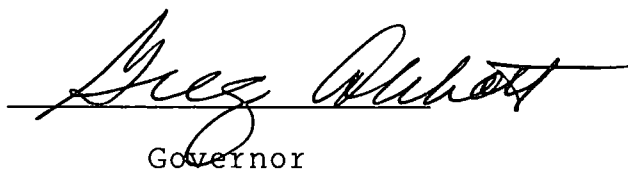
I certify that H.B. No. 2856 was passed by the House on May 9, 2017, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

  
Chief Clerk of the House

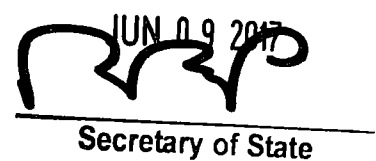
I certify that H.B. No. 2856 was passed by the Senate on May 24, 2017, by the following vote: Yeas 31, Nays 0.

  
Secretary of the Senate

APPROVED: 6-7-2017  
Date

  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
7:00 PM O'CLOCK

  
Secretary of State

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 12, 2017**

**TO:** Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2856** by Villalba (Relating to names of domestic and foreign filing entities for transacting business in this state.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Business Organization Code relating to names of domestic and foreign filing entities for transacting business in this state.

The Secretary of State and Comptroller of Public Accounts assume any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect on June 1, 2018.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 304 Comptroller of Public Accounts

**LBB Staff:** UP, CL, WP, ASa, NV



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 23, 2017**

**TO:** Honorable René Oliveira, Chair, House Committee on Business & Industry

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2856** by Villalba (Relating to names of domestic and foreign filing entities for transacting business in this state.), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Business Organization Code relating to names of domestic and foreign filing entities for transacting business in this state.

The Secretary of State and Comptroller of Public Accounts assume any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect on June 1, 2018.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 304 Comptroller of Public Accounts

**LBB Staff:** UP, CL, WP, ASa, NV

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 14, 2017**

**TO:** Honorable René Oliveira, Chair, House Committee on Business & Industry

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2856** by Villalba (Relating to names of domestic and foreign filing entities for transacting business in this state; creating an offense.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Business Organizations Code relating to names of domestic and foreign filing entities for transacting business in this state; creating an offense.

The Secretary of State and Comptroller of Public Accounts assume any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

The bill would take effect on June 1, 2018.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 307 Secretary of State

**LBB Staff:** UP, CL, NV, ASa

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**85TH LEGISLATIVE REGULAR SESSION**

**April 25, 2017**

**TO:** Honorable René Oliveira, Chair, House Committee on Business & Industry

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2856** by Villalba (Relating to names of domestic and foreign filing entities for transacting business in this state.), **Committee Report 1st House, Substituted**

The provisions of the bill addressed by this analysis would amend the Business Organizations Code as it relates to names of domestic and foreign filing entities for transacting business in this state.

This analysis assumes the provisions of the bill would not result in a significant impact on the demand for state correctional resources.

**Source Agencies:**

**LBB Staff:** UP, LM, ZB

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**85TH LEGISLATIVE REGULAR SESSION**

**April 14, 2017**

**TO:** Honorable René Oliveira, Chair, House Committee on Business & Industry

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2856** by Villalba (Relating to names of domestic and foreign filing entities for transacting business in this state; creating an offense.), **As Introduced**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Business Organizations Code as it relates to names of domestic and foreign filing entities for transacting business in this state. Under the provisions of the bill, delivery of false statement would be punishable as a Class A misdemeanor or state jail felony depending on the specific circumstances of the offense.

A state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felony offenses are subject to an optional fine not to exceed \$10,000.

Creating a new offense for which a criminal penalty is applied is expected to result in increased demands upon the correctional resources of counties or of the State due to a potential increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. However, this analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand for state correctional resources.

**Source Agencies:**

**LBB Staff:** UP, LM, ZB