

1-1 By: Herrero (Senate Sponsor - Hinojosa) H.B. No. 1493
1-2 (In the Senate - Received from the House May 3, 2021;
1-3 May 17, 2021, read first time and referred to Committee on State
1-4 Affairs; May 24, 2021, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 24, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>X</u>			
1-10	<u>X</u>			
1-11	<u>X</u>			
1-12	<u>X</u>			
1-13	<u>X</u>			
1-14	<u>X</u>			
1-15	<u>X</u>			
1-16	<u>X</u>			
1-17	<u>X</u>			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1493 By: Lucio

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the use of an entity name that falsely implies
1-22 governmental affiliation.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Title 6, Civil Practice and Remedies Code, is
1-25 amended by adding Chapter 150C to read as follows:

1-26 CHAPTER 150C. ENTITY NAME FALSELY IMPLYING GOVERNMENTAL
1-27 AFFILIATION

1-28 Sec. 150C.001. DEFINITION. In this chapter, "governmental
1-29 unit" has the meaning assigned by Section 101.001.

1-30 Sec. 150C.002. FALSELY IMPLYING GOVERNMENTAL AFFILIATION.

1-31 (a) A governmental unit is entitled to enjoin another person's use
1-32 of an entity name that falsely implies governmental affiliation
1-33 with the governmental unit.

1-34 (b) In an action brought under this section, the
1-35 governmental unit is entitled to injunctive relief throughout the
1-36 state.

1-37 (c) If the court finds that the person against whom the
1-38 injunctive relief is sought wilfully intended to imply governmental
1-39 affiliation with the governmental unit, the court, in the court's
1-40 discretion, may award reasonable attorney's fees and court costs to
1-41 the governmental unit.

1-42 SECTION 2. Subchapter B, Chapter 5, Business Organizations
1-43 Code, is amended by adding Sections 5.064 and 5.065 to read as
1-44 follows:

1-45 Sec. 5.064. NAME FALSELY IMPLYING GOVERNMENTAL AFFILIATION
1-46 PROHIBITED. (a) A filing entity or a foreign filing entity may not
1-47 use a name in this state that falsely implies an affiliation with a
1-48 governmental entity.

1-49 (b) The submission of a filing instrument is an affirmation
1-50 by the organizer or by a managerial official named in the filing
1-51 instrument that the name provided as the name of the filing entity
1-52 does not falsely imply an affiliation with a governmental entity.

1-53 (c) The addition of a word, phrase, or abbreviation that is
1-54 required to be included in the name of a domestic or foreign filing
1-55 entity under the provisions of this chapter is not a factor when
1-56 determining whether a name violates Subsection (a).

1-57 (d) For purposes of this section, an entity name means:

1-58 (1) the name of a domestic filing entity, as evidenced
1-59 by its certificate of formation, as amended or restated; or

1-60 (2) in the case of a foreign filing entity, the name of

2-1 the foreign filing entity or the fictitious name of a foreign filing
2-2 entity, as evidenced by its application for registration or its
2-3 most recent amended registration.

2-4 (e) The secretary of state shall adopt rules and prescribe
2-5 procedures to implement this section.

2-6 Sec. 5.065. FALSE IMPLICATION OF GOVERNMENTAL AFFILIATION;
2-7 AUTHORITY OF SECRETARY OF STATE AND ATTORNEY GENERAL. (a) On the
2-8 written request of a governmental entity, the secretary of state
2-9 may, in the secretary's discretion and after consultation with the
2-10 attorney general, determine within two years after the secretary's
2-11 acceptance of a filing instrument that a filing entity's or a
2-12 foreign filing entity's name falsely implies an affiliation with a
2-13 governmental entity in violation of Section 5.064.

2-14 (b) If the secretary of state determines under Subsection
2-15 (a) that a filing entity's or foreign filing entity's name falsely
2-16 implies an affiliation with a governmental entity, the secretary of
2-17 state shall notify the entity in writing of the need to amend the
2-18 entity's name. Not later than the 60th day after the date the
2-19 secretary of state sends the notification required by this
2-20 subsection, the entity shall:

2-21 (1) cease transacting business or operating under that
2-22 name in this state; and

2-23 (2) file with the secretary of state the applicable
2-24 instrument to amend the entity's name as shown in the records of the
2-25 secretary of state.

2-26 (c) The secretary of state shall provide the filing entity
2-27 or foreign filing entity an opportunity to respond to the notice
2-28 sent under Subsection (b), including through the submission of
2-29 documentation verifying that the filing entity is affiliated with
2-30 the governmental entity.

2-31 (d) If a filing entity or a foreign filing entity fails to
2-32 take the action required by Subsection (b)(2), the secretary of
2-33 state shall notify the attorney general of the entity's failure to
2-34 file the applicable filing instrument.

2-35 (e) The attorney general may bring an action in the name of
2-36 the state for injunctive relief to require compliance with this
2-37 section.

2-38 (f) An action under this section may be brought in a
2-39 district court in Travis County.

2-40 (g) The attorney general may recover reasonable expenses
2-41 incurred in obtaining injunctive relief under this section,
2-42 including court costs, reasonable attorney's fees, and
2-43 investigatory costs.

2-44 (h) The secretary of state shall adopt rules and prescribe
2-45 procedures to implement this section.

2-46 (i) Notwithstanding Subsection (a), on the written request
2-47 of a governmental entity, the secretary of state may, in the
2-48 secretary's discretion and after consultation with the attorney
2-49 general, determine within 10 years after the secretary's acceptance
2-50 of a filing instrument that a filing entity's or a foreign filing
2-51 entity's name falsely implies an affiliation with a governmental
2-52 entity in violation of Section 5.064. A determination under this
2-53 subsection is a determination under Subsection (a) for purposes of
2-54 Subsection (b). This subsection expires August 31, 2022.

2-55 SECTION 3. This Act takes effect September 1, 2021.

2-56 * * * * *