

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 1446  
Economic Matters

(Delegate McComas)

Budget and Taxation

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State Department of Assessments and Taxation - Recordation of Governing and  
Charter Documents - Prohibitions

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This bill prohibits a person from causing to be recorded a governing or charter document of an entity that (1) the person knows is not authorized by at least one individual whose name is included in the entity name or (2) does not otherwise conform to State law. The bill also establishes a process by which a person who believes that a governing or charter document was recorded in violation of this prohibition may submit an affidavit to the State Department of Assessments and Taxation (SDAT) stating the factual basis for the person's belief and, under specified circumstances, have SDAT void the governing or charter document.

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**Fiscal Summary**

**State Effect:** SDAT can handle the bill's requirements with existing budgeted resources. Revenues are not affected.

**Local Effect:** The circuit courts can handle the bill's requirements with existing budgeted resources.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** If SDAT receives an affidavit from a person alleging a governing or charter document was recorded in violation of the bill's provisions, SDAT must send a notice to the entity's resident agent with specified information. Among other things, the notice must advise that the governing or charter document may be voided unless the resident agent (or other authorized person) submits an affidavit (1) stating the belief that

the governing or charter document does *not* violate the bill's provisions and (2) providing the factual basis for that belief. If the department does not receive the required affidavit from the entity within the 45-day period after sending the notice, it may void a governing or charter document.

If SDAT receives an affidavit in response to the notice, it must send a subsequent notice to the individual who filed the original affidavit as well as the entity's resident agent stating that the department will take no further action unless ordered to do so by a court. A person who disagrees with a determination made by SDAT may then file a petition in the circuit court for the county in which the person resides or in which the resident agent is located seeking a determination of the validity of the governing or charter document. SDAT may not be joined as a party to a proceeding under the bill.

If the court determines that the governing or charter document was recorded in violation of the bill, the court must order that the document be voided. The prevailing party must then provide a copy of the order to SDAT. If the department receives a court order requiring voiding of a governing or charter document, it must (1) void the document and (2) file a record indicating that the document was voided in accordance with a court order.

The court may award to the prevailing party (1) damages sustained by the prevailing party and (2) reasonable attorney's fees and costs.

SDAT may not charge a fee to carry out its obligations under the bill. The department is also prohibited from refunding any fee paid for recording a governing or charter document that is voided under the bill.

**Current Law:** An "entity" includes a:

- corporation;
- limited liability company;
- limited liability partnership;
- limited partnership;
- limited liability limited partnership;
- professional corporation;
- trade name filer; and
- a business trust.

Entity names are prohibited from containing language stating (or implying) that the entity is organized for a purpose other than that allowed by the entity's (1) articles of incorporation, if the entity is a corporation; (2) articles of organization, if the entity is a limited liability company; (3) certificate of limited liability partnership, if the entity is a

limited liability partnership; (4) certificate of limited partnership, if the entity is a limited liability partnership; or (5) articles of incorporation, if the entity is a professional corporation.

An entity name must be distinguishable in the records of SDAT from (1) the entity name of an entity organized or authorized to transact business in the State; (2) an entity name reserved or registered under a specified section of the Corporations and Associations Article; or (3) the disclosed assumed name adopted by a foreign entity authorized to transact business in the State.

A person may reserve the exclusive use of an entity name, including a disclosed assumed name for a foreign entity whose name is not available, by delivering an application to SDAT for filing. The application must set forth the name and address of the applicant and the entity name proposed to be reserved. If SDAT finds that the entity name is available, the department must reserve the name for the applicant's exclusive use for a 30-day period.

**Small Business Effect:** A small business that registers as a specified business entity may benefit from having its trade name protected from encroachment by others. In addition, a small business may benefit to the extent that identity theft is reduced by preventing fraudulent registration of entity names.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State Department of Assessments and Taxation, Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2016  
kb/kdm Revised - House Third Reader - March 30, 2016  
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