



REPORT OF THE FRAUDULENT FILINGS WORKING GROUP

FEBRUARY 2023

INTRODUCTION

SB 22-034 was enacted on June 2, 2022 and is codified as sections 7-90-314 and 7-90-315, C.R.S. The intent of SB 22-034 is to provide remedies for fraudulent filings in the business registry of the Colorado Secretary of State's office ("SOS" or "Department of State").

The Department of State serves as Colorado's filing registry for business entity formation documents and associated documents, e.g., articles of incorporation, periodic reports (renewals), statements of change or correction, dissolution, etc. Documents are filed electronically in real-time through the SOS's online filing system, as authorized by section 24-21-111, C.R.S.

Section 7-90-314, C.R.S., creates a complaint and remedy process for two types of business identity theft: (1) situations where an individual's name and/or address have been used without consent in a business filing; and (2) situations where an individual's own registered Colorado business has been subject to an unauthorized filing by an unknown 3rd party. If the Colorado Attorney General investigates the complaint and certifies its allegations, section 7-90-314, C.R.S., directs the SOS to subsequently mark businesses and filings as unauthorized or fraudulent, as well as redact names and addresses from filings. In the case of an unauthorized or fraudulent business, the SOS is directed to terminate the entity's document filing capability to prevent further filings. This complaint and remedy process became available on February 1, 2023.

Section 7-90-315, C.R.S., mandated the creation of a working group ("Fraudulent Filings Working Group" or "Working Group") to study additional measures "to counteract fraudulent filings in the online business filing system."

The Working Group unanimously adopts this report's recommendations and urges the Secretary of State and the General Assembly to take up consideration of these recommendations as soon as possible.

Table of Contents

ABOUT THE FRAUDULENT BUSINESS FILINGS WORKING GROUP	3
FACTORS GUIDING THE WORKING GROUP’S CONSIDERATION OF ISSUES	4
RECOMMENDATIONS TO THE DEPARTMENT OF STATE.....	6
RECOMMENDATIONS TO THE COLORADO GENERAL ASSEMBLY.....	10
Appendix A: Fraudulent Filings Working Group Members.....	22
Appendix B: Fraudulent Filings Working Group Meeting Dates.....	23
Appendix C: Senate Bill 22-034.....	24
Appendix D: Senate Bill 12-123.....	36

ABOUT THE FRAUDULENT BUSINESS FILINGS WORKING GROUP

The Fraudulent Business Filings Working Group is comprised of eleven (11) members who are representatives from various affected entities (*see* Appendix A). Section 7-90-315(3), C.R.S., requires the Working Group to convene by September 15, 2022 and to submit a report to the General Assembly by January 31, 2023. Due to circumstances beyond the Working Group's control, including the cancellation of one of the Working Group's scheduled meetings because of snow, the Working Group was unable to meet that deadline.

The statute requires that the report contain potential legislative provisions to counteract and prevent fraudulent filings, as well as the costs and benefits associated with each potential legislative provision. The report may include specific recommendations.

Since August 31, 2022, the Working Group has met thirteen (13) times (*see* Appendix B). This Report is a compilation of the proposals made by the Working Group in those public meetings. The Working Group also solicited ideas from the public.

To ensure transparency, the SOS created a public-facing website that contains all of the relevant meeting materials and public comments located here:

<https://www.coloradosos.gov/pubs/business/fraudFilingsGroup.html>.

Additionally, all of the meetings were recorded and posted to SOS's website as audio broadcasts under the "Miscellaneous" category, located here:

https://www.sos.state.co.us/pubs/info_center/audioBroadcasts.html.

While limited by time, the Working Group attempted a broad and inclusive approach to the development of recommendations. The recommendations contained are based upon members' knowledge and experience in their various fields and were formed by a consensus of the group.

FACTORS GUIDING THE WORKING GROUP'S CONSIDERATION OF ISSUES

The following factors shaped the Working Group's consideration of issues and its final recommendations:

1. **Understanding the impact of business identity theft:** Business identity theft can have a significant impact on both a large- and small-scale. Law enforcement members of the Working Group provided information on the effects of fraudulent business activities in a variety of national and international spheres. In addition, Working Group members as a whole are aware of the specific and very real effects that business identity theft can have on individual lives.
2. **Maintaining consistency in statutory revisions:** Colorado has a long-developed and extensive body of law codified in Title 7 of the Colorado Revised Statutes governing business entities. In considering a proposal that may appear to be a "simple" statutory change, the Working Group considered the need to ensure the change is consistent with and does not create new conflicts with existing law.
3. **Understanding the costs of filing system and statutory changes:** Under current law, the Colorado SOS's filing duties are solely ministerial and filing does not create a presumption that the information is correct or incorrect:

7-90-306. Filing duty of secretary of state - manner of filing.

(1) If a document delivered to the secretary of state for filing pursuant to this part 3 complies with the requirements of section 7-90-301, the secretary of state shall file it. The secretary of state has no duty to determine whether the document complies with any or all requirements of any law.

* * *

(4) The secretary of state's duty to file documents under this title is ministerial. The filing of or refusal to file a document does not:

- (a) Affect the validity or invalidity of the document in whole or in part;
- (b) Relate to the correctness or incorrectness of information contained in the document; or
- (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

As of February 1, 2023, the Department of State maintains 3,633,621 business records with over 920,083 entities in good standing status. In considering proposed changes to current law that could modify the agency's current role, the Working Group considered increased costs, both actual dollar and time, to stakeholders. There are 813,512 entities with delinquent status.

4. **Using existing laws and tools where possible:** Connected to the issues #2 and #3 above is whether the Department of State, law enforcement, business owners, and other stakeholders can make better use of existing tools and options.
5. **Estimating the effect of the Corporate Transparency Act:** The possible effect, if any, of the federal Corporate Transparency Act ("CTA)," 31 U.S.C. § 5336, on fraudulent filings is not fully known. In

enacting the CTA in 2021, Congress intended to deter and decrease the formation and use of shell companies and other small entities engaging in money laundering and other illegal activities. The CTA requires a business entity, unless specifically exempted, to file information concerning the entity's actual "beneficial owners" with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"). The United States may impose civil penalties of up to \$500 for every day the violation continues and criminal fines up to \$10,000 and/or imprisonment for up to two years. The CTA and its accompanying CFR regulations takes effect on January 1, 2024.

6. **Understanding the role of other stakeholders:** In discussing and developing proposals, the Working Group discussed the degree to which proposed changes to Colorado law, including changes affecting the Department of State's operation and the online business filing system, could effectively remedy the larger business identity theft problem. Several Working Group members emphasized the need for stakeholders in other sectors, e.g., financial institutions that issue loans to businesses and commercial registered agents, to shore up their due diligence procedures.

RECOMMENDATIONS TO THE DEPARTMENT OF STATE

1. PUBLICIZE THE SECURE BUSINESS FILING PROGRAM

a. **Proposal:** The Working Group recommends to the Department of State that the agency should publicize more broadly the Secure Business Filing password-protection program, including highlighting it in the business filing document forms themselves, as part of the filing process, and on the SOS website.

b. **Basis:**

i. In authorizing the Department of State to mandate online electronic filings in lieu of paper filings in 2004, the General Assembly required the agency to:

... implement, under such conditions as the secretary may determine, a password-protected system for and take appropriate actions to address fraudulent activities against altering data in any filings, updates, or other filing requirements under title 7, C.R.S., while still allowing for access to and retrieval of publicly available records, including a certificate of good standing, without a password.

Section 24-21-111(1)(b), C.R.S.

ii. Consequently, the Department of State implemented the Secure Business Filing (SBF) system which allows a business owner to control who can file documents for the business entity. An individual cannot file a document without the correct email address and associated password.

iii. If an individual owns multiple businesses, each business may have its own SBF account. A business owner can set up an SBF account upon initial registration of the business or at any time thereafter. If the owner sets up SBF after forming the business, the Department of State mails a PIN to activate the account to the owner at the entity's listed principal office street address. There is no fee or charge for setting up an SBF account.

iv. Businesses that are "established," i.e., have existed for more than a few years, but have been dissolved or are currently delinquent, are particularly appealing to criminals seeking to obtain loans and other financial benefits. Fraudsters can "hijack" the business by filing a statement curing delinquency to bring the entity back into good standing status, then change the entity's name, principal office street address, and other information of record. If the business was dissolved, the fraudster may reinstate the business and, again, change the information for the fraudster's own purposes.

c. **Costs:** Low to no cost.

d. **Benefits:** May decrease the "hijacking" type of business identity theft.

2. PUBLICIZE AVAILABILITY OF EMAIL & TEXT NOTIFICATIONS

- a. **Proposal:** The Working Group recommends to the Department of State that it publicize more broadly the availability of receiving email or text notifications when a business filing is made.
- b. **Basis:**
 - i. Business owners can subscribe to receive notifications about their entities.
 - ii. Subscribers receive notices when a form has been filed, when the entity's status changes, and when the entity's periodic report or renewal is due.
 - iii. While text notifications are currently only available for new limited liability companies (LLCs) formed after January 13, 2021, the Department of State is working on increasing access to this tool as part of its broader project to improve and update the online business filing system.
- c. **Costs:** Low to no cost.
- d. **Benefits:** May decrease the "hijacking" type of business identity theft.

3. CREATE WEBSITE PAGE ON SECURITY FEATURES

- a. **Proposal:** The Working Group recommends to the Department of State that it should compile a single webpage on the office's website to explain all of the security features available to business filers.
- b. **Costs:** Low to no cost.
- c. **Benefits:** May decrease both types of business identity theft.

4. PUBLICIZE BUSINESS-IDENTITY THEFT RESOURCES

- a. **Proposal:** The Working Group recommends to the Department of State that it publicize more broadly the business-identity theft resources available on the agency's website.
- b. **Basis:** In this context, publicity means outreach to Colorado business industry groups and associations, the Colorado Bar Association, including its Business Law Section, and other business community stakeholders.
- c. **Costs:** Low to no cost.
- d. **Benefits:** May decrease both types of business identity theft.

5. PUBLICIZE SB 22-034 COMPLAINT PROCESS

- a. **Proposal:** The Working Group recommends to the Department of State that it publicize more broadly the availability of the new complaint process established in SB 22-034 (section 7-90-314(2), C.R.S.).
- b. **Costs:** Low to no cost.
- c. **Benefits:** May decrease both types of business identity theft. Improves the accuracy of information in the business registry and provides public notice concerning fraudulent businesses.

6. ENCOURAGE BUSINESSES TO SELF-PROTECT

- a. **Proposal:** The Working Group recommends to the Department of State that it encourage businesses to consult with legal counsel or other advisers concerning the potential advantages or disadvantages of: (a) seeking state or federal trademark protection for their names and their goods and services; and (b) recording federally registered trademarks with the U.S. Customs and Border Protection Service.
- b. **Basis:**
 - i. In some business identity theft cases, newly formed entities use entity names that are very similar to the names of established entities.¹
 - ii. Adding SOS website links to federal trademark resources encourages Colorado businesses to self-educate concerning their intellectual property law options.
 - iii. For example, entities should be encouraged to seek professional advice concerning the risks, costs, and benefits of: (i) registering a state trademark versus registering a federal trademark and (ii) registering a trademark with U.S. Customs and Border Protection. The Department of State can link important resources on its website for this purpose.
- c. **Costs:** Low to no cost.
- d. **Benefits:** Colorado businesses may be better equipped to deal with intellectual property law challenges, including possibly fraudulent entities attempting to take advantage of similar-sounding entity names.

7. EDUCATE PUBLIC TO USE CARE WITH BUSINESS REGISTRY DATA

- a. **Proposal:** The Working Group recommends to the Department of State that it educate the public and users of the business registry to carefully review the information found in a business's filing history to ensure that a proper understanding of what that data shows, including the potential for unauthorized or suspicious changes.
- b. **Basis:**

¹ An "entity name" is the name listed in the entity's formative document, e.g., the Articles of Incorporation. As per section 7-90-601, C.R.S., which requires entity names to be functionally "distinguishable on the record," the Secretary of State's online business filing system prevents the registration of entity names that are identical.

- i. Per section 7-90-306, C.R.S., the Secretary of State’s statutory role concerning business filings is ministerial. The Secretary of State has no obligation to verify nor does it verify the information submitted in filings.
 - ii. The Secretary of State should encourage stakeholders using the business registry data to complete their own independent due diligence procedures, including verifying the information contained in filings.
 - iii. This review should include looking closely at an entity’s complete registry history and not solely reviewing the most recent filings or relying on a certificate of good standing. Under Colorado law, a certificate of good standing evidences only that the entity has complied with periodic report filing requirements and has listed a registered agent for service of process. The certificate is not verification of the business’s information or a substantive assessment of its operations.
 - iv. There are undoubtedly many businesses that have cured lengthy delinquencies or that have been reinstated after dissolution for legitimate reasons.
 - v. However, in some cases, a cure of a delinquency or reinstatement is indicative of possibly fraudulent activity. A careful close review of an entity’s easily accessible history in the business registry -- and appropriate follow up as needed per due diligence standards – could actively decrease fraud.
- c. **Costs:** Low to no cost. The Department of State can educate registry users on the main registry search page and certificates.
 - d. **Benefits:** Fraudsters taking out loans for fraudulent companies appear to depend on the assumption that a financial institution will not verify the entity information. Education concerning the need to verify registry information and the Secretary of State’s limited filing role may decrease financial fraud.

8. IMPROVE LAW ENFORCEMENT REQUEST PROCESS

- a. **Proposal:** The Working Group recommends to the Department of State that it work with law enforcement agencies to improve the process for requesting and providing information related to fraudulent filings.
- b. **Basis:** The Department of State and the Colorado Bureau of Investigations (CBI) have worked closely to develop a standardized process for providing CBI needed business filing information. The Department of State has also worked with other law enforcement agencies.
- c. **Costs:** Costs are unknown and depend on changes made to the process.
- d. **Benefits:** Process improvement may decrease both types of business identity theft.

RECOMMENDATIONS TO THE COLORADO GENERAL ASSEMBLY

1. INCREASE REQUIREMENTS TO BE A REGISTERED AGENT – DMV LICENSE OR ID

- a. **Proposal:** The Working Group recommends to the General Assembly that it enact statutory changes to require that a registered agent that is a human being, i.e., a natural person or individual and not a business entity, hold a current, valid Colorado driver’s license or state identification.
- b. **Basis:**
- i. A registered agent is an individual or business entity authorized to receive service of process, e.g., service of summons for lawsuit, a subpoena, and other legal process, on behalf of a business entity. Section 7-90-704(1), C.R.S. (“ The registered agent of an entity is an agent of the entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.”)
 - ii. Colorado law requires both domestic entities and foreign entities that are authorized to transact business in Colorado to “continuously maintain in [Colorado] a registered agent.” Section 7-90-701(1), C.R.S.
 - iii. Colorado law authorizes both individuals and business entities to serve as registered agents. An individual must be “eighteen years of age or older whose primary residence or usual place of business is in this state[.]” Section 7-90-701(1)(a), C.R.S.
 - iv. One of the hallmarks of fraudulent filings is including the name of either a nonexistent individual or an existing individual who is not based in Colorado or did not consent to and is unaware of being listed as the entity’s registered agent.
- c. **Legislative changes:** At minimum, this recommendation requires revision of the registered agent requirements in section 7-90-701, C.R.S. The following potential statutory amendment could achieve the Working Group’s recommendation:

(1) Every domestic entity for which a constituent filed document is on file in the records of the secretary of state and every foreign entity authorized to transact business or conduct activities in this state shall continuously maintain in this state a registered agent that shall be:

(a) An individual who is eighteen years of age or older whose primary residence or usual place of business is in this state AND WHO HOLDS A CURRENT, VALID DRIVER’S LICENSE ISSUED BY THE STATE OF COLORADO OR AN IDENTIFICATION CARD ISSUED BY THE STATE OF COLORADO.

(b) A domestic entity IN GOOD STANDING AS LISTED IN THE SECRETARY OF STATE’S RECORDS AND having a usual place of business in this state; or

(c) A foreign entity WHICH IS authorized to transact business or conduct activities in this state, IS IN GOOD STANDING AS LISTED

IN THE SECRETARY OF STATES RECORDS, AND HAS having a usual place of business in this state.

(2) An entity IN GOOD STANDING AS LISTED IN THE SECRETARY OF STATE'S RECORDS having a usual place of business in this state may serve as its own registered agent.

(3) Any document delivered to the secretary of state for filing on behalf of an entity that appoints a person as the registered agent for the entity shall contain a statement that the person has consented to being so appointed.

- d. **Costs:** This recommendation will require changes to the existing online business filing system to allow the filer to enter the registered agent's identification information. The system must maintain the confidentiality of this personal identifying information and ensure that it is not publicly disclosed.
- e. **Benefits:** Requiring proof of a registered agent's identity may decrease both types of business identity theft and improves the accuracy of information in the business registry. Per section 1-2-302, C.R.S., the Department of State and the Department of Revenue already currently exchange information from the Division of Motor Vehicle's driver's license database for both the Notary Program and the Election Division.

2. INCREASE REQUIREMENTS TO BE A REGISTERED AGENT – GOOD STANDING

- a. **Proposal:** The Working Group recommends to the General Assembly that it enact statutory changes to require that a registered agent that is a business entity (i.e., not an individual human being/natural person) be currently listed in good standing on the Colorado business registry.
- b. **Basis:**
 - i. As indicated above, a business entity may also serve as another business entity's registered agent of record. The business entity must be either "[a] domestic entity having a usual place of business in this state; or . . . [a] foreign entity authorized to transact business or conduct activities in this state that has a usual place of business in this state." Section 7-90-701(1), C.R.S. A business entity "having a usual place of business in this state may serve as its own registered agent." Section 7-90-701(2), C.R.S.
 - ii. Both domestic entities and foreign entities authorized to transact business or conduct activities in Colorado (by filing a statement of foreign entity authority) must file periodic reports on an annual basis.
 - 1. A periodic report serves as an update of the entity's basic information on file, i.e., its principal office address, its mailing address, and the entity's registered agent information.
 - 2. Crucially, failure to file the required periodic report results in the entity's loss of a good standing status.

- iii. Currently, Colorado law does not require a business entity serving as a registered agent for itself or another business entity to have good standing status. Consequently, registered agent information may be outdated and incorrect.
- c. **Legislative changes:** At minimum, this recommendation requires revision of the registered agent requirements in section 7-90-701, C.R.S. See the recommended revisions to section 7-90-701, C.R.S., above in 1.c.
- d. **Costs:** This recommendation will require changes to the existing online business filing system to verify the status of an entity listed as a registered agent.
- e. **Benefits:** Requiring proof of a registered agent's identity may decrease both types of business identity theft; improve the accuracy of information in the business registry; and ensure that stakeholders can contact and serve business entities with legal process.

3. TIGHTEN THE DEFINITION OF "USUAL PLACE OF BUSINESS"

- a. **Proposal:** The Working Group recommends to the General Assembly that it enact statutory changes to require a prohibition against the use of a commercial mailbox or a government PO box as an address for the registered agent.
- b. **Basis:**
 - i. Section 7-90-102(56), C.R.S., provides that a registered agent's address is "the street address of the registered agent's primary residence in this state or usual place of business in this state if the registered agent is an individual, or of the registered agent's usual place of business in this state if the registered agent is an entity."
 - ii. Title 7, C.R.S., does not define "a usual place of business." Section 7-90-102(62), C.R.S., does define a "street address" as "mean[ing], with respect to a physical location, the street name and number, city, state, and (if not the United States) country, and the postal code, if any, that is required for delivery of mail to the location."
 - iii. The SOS has interpreted both "street address" and "the usual place of business" to mean the actual physical location of the registered agent. A process server should be able to physically hand over documents to the registered agent at this location.
 - iv. However, in some fraudulent filing cases, the registered agent's listed "usual place of business" is in all actuality a commercial mailbox, e.g., a mailbox at a UPS, Kinko's, Mailboxes R Us location or similar type of store. Such an address is neither the street address of the registered agent's primary residence (if the registered agent is an individual) nor the registered agent's "usual place of business" (if the registered agent is either an individual or an entity). And it is clear that it is impossible to physically serve a registered agent at a mailbox location.
- c. **Legislative changes:** This recommendation requires revision of the definitions in section 7-90-102(56) and 7-90-102(62), C.R.S., and possibly section 7-90-701, C.R.S. The following potential statutory amendments could achieve the Working Group's recommendation:

Section 7-90-102(56), C.R.S.:

“Registered agent address” means the street address and, if different, the mailing address of the registered agent’s primary residence in this state or usual place of business in this state if the registered agent is an individual, or of the registered agent’s usual place of business in this state if the registered agent is an entity. FOR THE PURPOSES OF THIS SUBSECTION (56), THE TERM “USUAL PLACE OF BUSINESS” MEANS A PLACE IN THIS STATE THAT IS CUSTOMARILY OPEN DURING NORMAL BUSINESS HOURS WHERE AN INDIVIDUAL WHO IS AUTHORIZED TO PERFORM THE SERVICES OF A REGISTERED AGENT, INCLUDING ACCEPTING SERVICE OF PROCESS AND OTHER NOTIFICATIONS FOR THE ENTITY FOR WHICH THE REGISTERED AGENT IS SERVING AS REGISTERED AGENT, IS COMMONLY PRESENT. SPECIFICALLY AND WITHOUT LIMITATION, THE TERM “USUAL PLACE OF BUSINESS” DOES NOT INCLUDE A U.S. POST OFFICE BOX OR A COMMERCIAL POST OFFICE BOX REGARDLESS OF WHETHER THEY MAY ALSO HAVE A STREET ADDRESS.

Section 7-90-102(62), C.R.S.:

EXCEPT WITH RESPECT TO THE STREET ADDRESS OF A REGISTERED AGENT’S USUAL PLACE OF BUSINESS AS SET FORTH IN SECTION 7-90-102(56), "Street address" means, with respect to a physical location, the street name and number, city, state, and (if not the United States) country, and the postal code, if any, that is required for delivery of mail to the location. If, by reason of rural location or otherwise, a street name and number, city, or town does not exist, "street address" shall mean an appropriate description fixing as nearly as possible the actual physical location, but, for all locations in the United States, the county or parish and, if any, the rural free delivery route and the United States postal code shall be included.

Section 7-90-701(4), C.R.S.:

THE TERM “USUAL PLACE OF BUSINESS” AS USED HEREIN IS AS DEFINED IN SECTION 7-90-102(56).

- d. **Costs:** Low to no cost.
- e. **Benefits:** Prohibiting “mailbox” addresses for registered agents may decrease both types of business identity theft; improve the accuracy of information in the business registry; and Ensure that stakeholders can contact and serve business entities.

4. CHANGE THE STATUS OF AN UNAUTHORIZED OR FRAUDULENT ENTITY TO DELINQUENT

- a. **Proposal:** The Working Group recommends to the General Assembly that it enact statutory changes to authorize the SOS to change an entity’s status to delinquent in the business registry immediately following the conclusion of the administrative process if there is a finding that an entity was created without authorization or for fraudulent purposes.

b. **Basis:**

- i. Sections 7-90-314(4)(g)(V)(A) and (V), C.R.S., provide remedies upon an administrative law judge's finding that an entity (without specifying domestic or foreign) has been found to have been created without authorization or for fraudulent purposes, the administrative law judge is directed to make an additional finding as to whether: (A) An entity was created without authorization or for fraudulent purposes; or (B) An unauthorized filing was made. As noted, the complaint procedure does not limit the authority to take action under section 7-90-314, C.R.S., to domestic entities; foreign entities may also be subject to the sanctions.

Section 7-90-314(4)(g)(V), C.R.S., then directs that, if the administrative law judge finds that, or if a conceded notice and demand sets forth that, an entity was created without authorization or for fraudulent purposes, the attorney general shall notify the secretary of state, who shall take certain actions as specified in the statute.

- ii. Per the current SB 22-034 process, an entity certified as unauthorized or fraudulent will be unable to file additional periodic reports and consequently will eventually go into noncompliant and then delinquent status.
- iii. However, in the intervening period, in some cases, an entity's status on the website may still show as "Good".
- iv. Authorizing the Secretary of State to also immediately change the entity's status to delinquent will provide public notice and is consistent with the fact that the entity's ability to generate a certificate of good standing has also been terminated (per section 7-90-314(4)(g)(V)(C), C.R.S.).

c. **Legislative changes:**

- i. This recommendation requires revising section 7-90-314(4)(g)(V), C.R.S., section 7-90-901, C.R.S., and section 7-90-902, C.R.S. The Working Group does not believe that any change is needed to section 7-90-314(4)(g)(IV), C.R.S. The following potential statutory amendments could be made to achieve the Working Group's recommendations:

Sections 7-90-314(4)(g)(IV)(A) and (V), C.R.S.:

(IV) If the administrative law judge finds that subsection (1) of this section has been violated, the administrative law judge shall make an additional finding as to whether:

(A) An entity was created without authorization or for fraudulent purposes. . . [.]

(V) If the administrative law judge finds that, or if a conceded notice and demand sets forth that, an entity was created without authorization or for fraudulent purposes, the attorney general shall notify the secretary of state, who shall:

- (A) Mark the business record with a notice that the entity is unauthorized or fraudulent AND DELINQUENT UNDER SECTION 7-90-901;
- (B) Redact each address and name that was used without authorization from the entity's filing and from any other relevant filings; and
- (C) Disable additional filing functionality of the entity's records.

Section 7-90-901. Grounds for Delinquency.

(1) A domestic entity that is a reporting entity may be declared delinquent under section 7-90-902 if:

- (a) The domestic entity does not pay any fee or penalty imposed by this title when it is due;
- (b) The domestic entity does not comply with part 5 of this article, providing for reports from reporting entities; ~~or~~
- (c) The domestic entity does not comply with part 7 of this article, providing for registered agents and service of process; ~~OR~~
- (d) THE DOMESTIC ENTITY HAS BEEN FOUND TO HAVE BEEN CREATED WITHOUT AUTHORIZATION OR FOR FRAUDULENT PURPOSES PURSUANT TO SECTION 7-90-314(4)(g)(V).

(2) A foreign entity that is a reporting entity may be declared delinquent under section 7-90-902 if:

- (a) The foreign entity does not pay any fee or penalty imposed by this title when it is due;
- (b) The foreign entity does not comply with part 5 of this article, providing for reports from reporting entities;
- (c) The foreign entity does not comply with part 7 of this article, providing for registered agents and service of process;
- (d) The foreign entity does not deliver for filing an appropriate statement of change when necessary to make its statement of foreign entity authority true in all respects; ~~or~~
- (e) THE FOREIGN ENTITY HAS BEEN FOUND TO HAVE BEEN CREATED WITHOUT AUTHORIZATION OR FOR FRAUDULENT PURPOSES PURSUANT TO SECTION 7-90-314(4)(g)(V); OR
- ~~(e)~~(f) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of entity records in the jurisdiction under the law of which the foreign entity was formed to the effect that it no longer exists as the result of a dissolution or merger or otherwise.

Section 7-90-902. Declaration of Delinquency.

(1)(a) If the secretary of state determines that one or more grounds exist under section 7-90-901 for declaring an entity delinquent and the entity does not correct each ground for declaring it delinquent or demonstrate to the reasonable satisfaction of the secretary of state that such ground

does not exist within sixty days after the secretary of state makes such determination, the entity becomes delinquent following the expiration of such sixty days.

(b) IF THE GROUNDS FOR SUCH DELINQUENCY ARE AS DEFINED IN SECTION 7-90-901(1)(D) OR SECTION 7-90-901(2)(E), THE ENTITY BECOMES DELINQUENT IMMEDIATELY UPON SUCH DETERMINATION NOTWITHSTANDING THE SIXTY-DAY PERIOD SET FORTH IN SECTION 7-90-902(1)(a).

(2) (Deleted by amendment, L. 2010, (HB 10-1403), ch. 404, p. 1998, § 20, effective August 11, 2010.)

- d. **Costs:** May require changes to the existing online business filing system.
- e. **Benefits:** Immediately changing a business's status to delinquent may improve the accuracy of information in the business registry, provide important public notice, and decrease the amount of financial fraud.

5. BROADEN WHO CAN START AN SB 22-034 COMPLAINT PROCESS – LAW ENFORCEMENT

- a. **Proposal:** The Working Group recommends to the General Assembly that it enact statutory changes to broaden the persons eligible to submit a complaint through the business filing complaint process in SB 22-034 (section 7-90-314, C.R.S.) to allow law enforcement agencies to initiate their own complaints against a business, thereby triggering the notice procedure in the statute.
- b. **Basis:** Section 7-90-314(2), C.R.S., currently authorizes only “a person that is named in or otherwise affected by the filing of a [business] document . . . [to] submit a complaint to the secretary of state” alleging that the document contains fraudulent information.
- c. **Legislative changes:** This recommendation requires changes to section 7-90-314(2), C.R.S.
- d. **Costs:** Unknown. Possibly an increase in the number of complaints requiring additional employee resources.
- e. **Benefits:** May decrease both types of business identity theft.

6. SUSPEND FILING ABILITY FOR DELINQUENT ENTITIES

- a. **Proposal:** The Working Group recommends to the General Assembly that it enact statutory changes to block/suspend the ability to file any document for an entity that has been delinquent for at least five (5) years until that entity submits an affidavit under penalties of perjury from an individual attesting to their authority to act for the entity and providing a copy of a photo ID.
- b. **Basis:**

- i. As indicated in Recommendation #2 to the Department of State above, “stable” or “established” businesses that have existed for more than a few years appeal to criminals seeking to obtain loans and other financial benefits.
 - ii. Fraudsters can “hijack” a delinquent business by filing a statement curing delinquency to bring the entity back good standing status, then change the entity’s name, principal office address, and other information of record to suit their needs.
- c. **Legislative changes:** This recommendation requires changes to section 7-90-904, C.R.S., “Cure of delinquency”. The following potential statutory amendments could be made to section 7-90-904(1), C.R.S., to achieve the Working Group’s recommendations:

7-90-904. Cure of delinquency.

(1)(a) A delinquent entity THAT HAS BEEN DELINQUENT FOR A PERIOD OF LESS THAN FIVE YEARS may cure its delinquency by:

~~(a)~~(I) Delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement curing delinquency SIGNED BY AN INDIVIDUAL UNDER PENALTIES OF PERJURY stating:

~~(A)~~(A) The entity’s principal office address; and

~~(B)~~(B) The entity’s registered agent’s name and address.

(b) (Deleted by amendment, L. 2008, p. 23, § 17, effective August 5, 2008.)

(c) A DELINQUENT ENTITY THAT HAS BEEN DELINQUENT FOR FIVE YEARS OR LONGER MAY CURE ITS DELINQUENCY BY:

(I) DELIVERING TO THE SECRETARY OF STATE, FOR FILING PURSUANT TO PART 3 OF THIS ARTICLE, A STATEMENT SIGNED BY AN INDIVIDUAL UNDER PENALTIES OF PERJURY CURING DELINQUENCY STATING:

(A) THE ENTITY'S PRINCIPAL OFFICE ADDRESS;

(B) THE ENTITY'S REGISTERED AGENT'S NAME AND ADDRESS;
AND

(C) A LEGAL OPINION OF A COLORADO ATTORNEY OR OTHER EVIDENCE THAT THE INDIVIDUAL SIGNING THE DOCUMENTS TO BE DELIVERED TO THE SECRETARY OF STATE UNDER SECTION 7-90-904(4)(A) HAS THE AUTHORITY OF THE ENTITY TO SIGN AND DELIVER SUCH DOCUMENTS ON BEHALF OF THE ENTITY.

d. **Costs:**

- i. This recommendation requires the development of a new form or modification of the existing statement curing delinquency form.
- ii. This recommendation may involve possible changes to the existing online business filing system to accommodate filing an affidavit.
- iii. Changes to the filing system must ensure that the filer’s photo ID image and associated data are not published online.

- iv. This recommendation may also require additional SOS employees to verify that the filer included a copy of required photo ID.

e. **Benefits:**

- i. This recommendation presents an additional step which a fraudster seeking to hijack an existing legitimate business may be unwilling and/or unable to do.
- ii. There are instances where the business's legitimate owner inadvertently lets the business "go delinquent" by failing to file a periodic report. The minimum five-year time period is intended to strike a balance so that legitimate business owners are not subject to the additional filing requirements if they cure the delinquency within a reasonable period.

7. SUSPEND FILING ABILITY FOR DISSOLVED ENTITIES

- a. **Proposal:** The Working Group recommends to the General Assembly that it enact statutory changes to block/suspend the ability to file any document for an entity that has been dissolved for at least two (2) years until that entity submits an affidavit under penalties of perjury from an individual attesting to their authority to act for the entity and providing a copy of a photo ID.

b. **Basis:**

- i. As indicated above, businesses that have existed for more than a few years appeal to criminals seeking to obtain loans and other financial benefits.
- iii. Fraudsters can reinstate a dissolved business by filing Articles of Reinstatement, then change the entity's name, principal office address, and other information of record to suit their needs.

- c. **Legislative changes:** This recommendation requires changes to section 7-90-1003, "Articles of reinstatement." The following potential statutory amendments could be made to section 7-90-1003, C.R.S., to achieve the Working Group's recommendations:

7-90-1003. Articles of reinstatement.

(1) In order to reinstate an entity under this part 10 THAT HAS BEEN DISSOLVED FOR A PERIOD OF LESS THAN TWO YEARS, articles of reinstatement shall be delivered BY AN INDIVIDUAL NAMED IN SUCH ARTICLES OF REINSTATEMENT to the secretary of state, for filing pursuant to part 3 of this article stating:

- (a) The domestic entity name of the entity;
- (a.5) The domestic entity name of the entity following reinstatement, which entity name shall comply with section 7-90-1004 ;
- (b) The date of formation of the entity;
- (c) The Colorado statute under which the entity existed immediately prior to its dissolution;
- (d) ~~The date of dissolution of the entity, if known;~~
- (e) Deleted by Laws 2006, Ch. 192, § 65, eff. July 1, 2006.

- (f) A statement that all applicable conditions of section 7-90-1002 have been satisfied;
- (g) The principal office address of the entity's principal office; and
- (h) The registered agent name and registered agent address of the entity's registered agent.

[Add the following new subsection 7-90-1003(2) and renumber the existing subsection (2) as (3) as follows:

(2) In order to reinstate an entity under this part 10 THAT HAS BEEN DISSOLVED FOR A PERIOD OF TWO YEARS OR MORE OR IF THE PERIOD THAT THE ENTITY HAS BEEN DISSOLVED IS NOT KNOWN BASED ON THE RECORDS OF THE SECRETARY OF STATE, articles of reinstatement shall be delivered BY AN INDIVIDUAL NAMED IN SUCH ARTICLES OF REINSTATEMENT to the secretary of state, for filing pursuant to part 3 of this article stating:

- (a) The domestic entity name of the entity;
- (a.5) The domestic entity name of the entity following reinstatement, which entity name shall comply with section 7-90-1004;
- (b) The date of formation of the entity;
- (c) The Colorado statute under which the entity existed immediately prior to its dissolution;
- (d) The date of dissolution of the entity, if known;
- (e) Deleted by Laws 2006, Ch. 192, § 65, eff. July 1, 2006.
- (f) A statement that all applicable conditions of section 7-90-1002 have been satisfied;
- (g) The principal office address of the entity's principal office; ~~and~~
- (h) The registered agent name and registered agent address of the entity's registered agent; AND
- (i) A LEGAL OPINION OF A COLORADO ATTORNEY OR OTHER EVIDENCE THAT THE INDIVIDUAL DELIVERING THE DOCUMENTS TO THE SECRETARY OF STATE UNDER SECTION 7-90-1003(2) HAS THE AUTHORITY OF THE ENTITY TO SIGN AND DELIVER SUCH DOCUMENTS ON BEHALF OF THE ENTITY.

~~(2)~~(3) If the constituent-filed document referred to in section 7-90-1001 is no longer in the publicly-accessible electronic records of the secretary of state at the time articles of reinstatement are delivered to the secretary of state for filing, the entity shall cause a true and complete copy of its constituent filed document to be attached to its articles of reinstatement.

d. Costs:

- i. This recommendation requires the development of a new form or modification of the existing Articles of Reinstatement form.

- ii. This recommendation may involve possible changes to the existing online business filing system to accommodate filing an affidavit.
 - iii. Changes to the filing system must ensure that the filer's photo ID image and associated data are not published online.
 - iv. This recommendation may also require additional agency employees to verify that the filer included a copy of required photo ID.
- e. **Benefits:**
- i. This recommendation presents an additional step which a fraudster seeking to reinstate a dissolved legitimate business may be unwilling and/or unable to do.
 - ii. There are instances where the business's legitimate owner or other authorized individual may seek to reinstate a dissolved business. However, in contrast to letting a business go delinquent, dissolving a business requires that the owner take the affirmative step of filing for dissolution. (Or, in the case of judicial dissolution per sections 7-80-810 [LLCs] and 7-114-301 [corporations], dissolution requires a court proceeding.) Accordingly, the proposed lesser two-year period provides for a heightened standard for reinstatements compared to curing a delinquency.

8. CLARIFY EXISTING PERJURY STATEMENT IN EACH BUSINESS FILING.

- a. **Proposal:** The Working Group recommends to the General Assembly that it enact statutory changes to clarify the statutory perjury statement affirmed by filers when submitting a document to the SOS.
- b. **Basis:**
 - i. In 2004, Colorado's business filing system switched from a paper system to its current online filing system. This necessitated a change from requiring an entity owner (or director, member, or other agent) to physically sign business documents filed with the Secretary of State.
 - ii. Instead, in 2004, the General Assembly enacted section 7-90-301.5, C.R.S., which provides that the act of an individual's causing a document to be delivered to the Secretary of State constitutes an affirmation of certain facts under penalties of perjury:

Causing a document to be delivered to the secretary of state for filing pursuant to this part 3 shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of this part 3, the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the

requirements of this part 3, the constituent documents, and the organic statutes.

- iii. Each of the Department of State's business filing document forms contains the statutory perjury statement.
 - iv. By submitting a document to the Secretary of State for filing, the individual is affirming several things. (This includes affirming the individual's belief in good faith, not actual knowledge, that the document both "is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing" and complies with Title 7, C.R.S., laws.
- c. **Legislative changes:** Requires revision of section 7-90-301.5, C.R.S.
 - d. **Costs:** Estimated to be relatively low cost to revise forms.
 - e. **Benefits:** The Working Group recommends simplifying this statement to make it more comprehensible, which may deter some filers with fraudulent intent.

9. **PROVIDE FUNDING NECESSARY TO IMPLEMENT SB 12-123**

- a. **Proposal:** The Working Group recommends to the General Assembly that it provide funding and spending authority to the Secretary of State to fully implement the commercial registered agent requirements of SB 12-123. See Appendix D. The Colorado General Assembly adopted SB 12-123, which includes a number of provisions in the Colorado Corporations and Associations Act (Title 7, Article 90, C.R.S.) that become effective 90 days after the Secretary of State's certification. In order to accomplish the certification, the Secretary of State must implement the necessary computer system changes to implement the provisions of SB 12-123. Funding has not been obtained necessary to make these changes.

In anticipation of implementing the steps necessary to make the SB 12-123 changes effective, the Secretary of State's office should consult with commercial registered agents and other business constituencies to determine whether there are any significant objections and whether those objections should be included in an amendment to some or all of the SB 12-123 provisions.

- b. **Basis:** These changes should be moved forward with funding to be provided by the General Assembly.
- c. **Legislative Changes:** To be determined, if any.
- d. **Costs:** Estimated in the several million-dollar range, per the Working Group's discussion.
- e. **Benefits:** The Working Group understands that the SB 12-123 provisions will update the Secretary of State's procedures with respect to commercial registered agents

Appendix A: Fraudulent Filings Working Group Members

- Chris Beall - SOS appointee, Deputy Secretary of State, Secretary of State Designee/Colorado Department of State convener
- Rachel Beck - House Speaker appointee, Executive Director, Colorado Competitive Council
- Alberta Bennett - SOS appointee, Operations Supervisor, Business & Licensing Division, Department of State
- Charles Calvin - SOS appointee, shareholder Calvin Law Firm, LLC
- Ralph Gagliardi - CDPS appointee, Agent-in-Charge, High Tech Crimes Unit, Colorado Bureau of Investigation
- Carla Hoke - SOS appointee, Legal Analyst, Business & Licensing Division, Department of State
- Herrick Lidstone - CBA appointee, Burns Figa & Will PC
- Jefferey Riester - AG appointee, Assistant Attorney General and Deputy Legislative Liaison, Colorado Department of Law
- Gregory Wertsch - House Speaker appointee, Special Agent, U.S. Department of Homeland Security
- Simone Ross - Senate President appointee, CEO, Colorado Women's Chamber of Commerce
- Michael Ferrufino - Senate President appointee, President & CEO, Hispanic Chamber of Commerce of Metro Denver

Appendix B: Fraudulent Filings Working Group Meeting Dates

Monday, February 6, 2023 at 3:30 PM MST

Wednesday, February 1, 2023 at 3:30 PM MST

Monday, January 30, 2023 at 3:30 PM MST

Wednesday, January 25, 2023 at 3:30 PM MST

Wednesday, January 11, 2023 at 3:30 PM MST

Wednesday, January 4, 2023 at 3:30 PM MST

Wednesday, December 21, 2022 at 3:30 PM MST

Wednesday, December 7, 2022 at 3:30 PM MST

Wednesday, November 16, 2022 at 3:30 PM MST

Wednesday, October 26, 2022 at 3:30 PM MDT

Wednesday, October 5, 2022 at 3:30 PM MDT

Wednesday, September 14, 2022 at 3:30 PM MDT

Wednesday, August 31, 2022 at 3:30 PM MDT

Appendix C: Senate Bill 22-034

An Act

SENATE BILL 22-034

BY SENATOR(S) Kolker and Priola, Bridges, Buckner, Gardner, Gonzales, Holbert, Kirkmeyer, Lundeen, Pettersen, Smallwood, Winter, Woodward; also REPRESENTATIVE(S) Bird and Sandridge, Carver, Cutter, Duran, Herod, Hooton, Jodeh, Kipp, Lindsay, Lontine, Neville, Pico, Snyder, Titone, Valdez A., Weissman, Bennett, Boesenecker, Esgar, Exum, Geitner, Kennedy, McCluskie, McKean, Ricks, Soper, Van Beber, Van Winkle, Williams, Woodrow, Young.

CONCERNING MEASURES TO COUNTERACT THE FILING OF FRAUDULENT BUSINESS DOCUMENTS WITH THE SECRETARY OF STATE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add 7-90-314 and 7-90-315** as follows:

7-90-314. Fraudulent filings - complaint - review - referral to attorney general - referral to administrative law judge - marking filing as fraudulent - deceptive trade practice. (1) **Fraudulent filings.** THE FOLLOWING ACTIONS ARE PROHIBITED:

(a) INCLUDING THE NAME OF A PERSON ON A DOCUMENT FILED IN THE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

SECRETARY OF STATE'S OFFICE UNDER THIS PART 3 WITHOUT THE NAMED PERSON'S WRITTEN CONSENT IF THE PERSON IS INCLUDED IN THE FILING AS:

(I) THE REGISTERED AGENT;

(II) THE INDIVIDUAL CAUSING THE DOCUMENT TO BE DELIVERED TO THE SECRETARY OF STATE'S OFFICE FOR FILING;

(III) THE PERSON INCORPORATING, FORMING, OR ORGANIZING AN ENTITY; OR

(IV) ANY OTHER PERSON REQUIRED UNDER THIS TITLE 7 TO BE IDENTIFIED IN A DOCUMENT FILED IN THE SECRETARY OF STATE'S OFFICE;

(b) INCLUDING AN ADDRESS IN A DOCUMENT FILED IN THE SECRETARY OF STATE'S OFFICE UNDER THIS PART 3 WITHOUT THE CONSENT OF THE OWNER OF OR OCCUPANT OF THE INCLUDED ADDRESS; AND

(c) DELIVERING A DOCUMENT REGARDING AN ENTITY TO THE SECRETARY OF STATE'S OFFICE IF THE INDIVIDUAL WHO MAKES THE DELIVERY LACKS THE NECESSARY WRITTEN CONSENT OR AUTHORITY TO DO SO.

(2) **Complaint.** A PERSON THAT IS NAMED IN OR OTHERWISE AFFECTED BY THE FILING OF A DOCUMENT UNDER THIS PART 3 MAY SUBMIT A COMPLAINT TO THE SECRETARY OF STATE, ON A FORM PRESCRIBED BY THE SECRETARY OF STATE, ALLEGING THAT THE FILING WAS MADE IN VIOLATION OF SUBSECTION (1) OF THIS SECTION. THE COMPLAINT MUST INCLUDE AT LEAST THE FOLLOWING INFORMATION:

(a) A DESCRIPTION OF THE ALLEGED VIOLATION;

(b) THE NAME; STREET ADDRESS; TELEPHONE NUMBER; E-MAIL ADDRESS, IF AVAILABLE; AND ANY ADDITIONAL CONTACT INFORMATION OF THE PERSON MAKING THE COMPLAINT;

(c) THE NAME; STREET ADDRESS; TELEPHONE NUMBER; E-MAIL ADDRESS, IF AVAILABLE; AND ANY ADDITIONAL CONTACT INFORMATION OF ANY THIRD PARTY AUTHORIZED TO SUBMIT THE COMPLAINT BY AND ON BEHALF OF THE PERSON THAT IS NAMED IN OR AFFECTED BY THE FILING;

(d) THE UNIQUE IDENTIFICATION NUMBER ASSIGNED BY THE SECRETARY OF STATE TO EACH FILED DOCUMENT THAT IS ALLEGED TO HAVE BEEN FILED IN VIOLATION OF SUBSECTION (1) OF THIS SECTION;

(e) THE UNIQUE IDENTIFICATION NUMBER ASSIGNED BY THE SECRETARY OF STATE TO EACH ENTITY ASSOCIATED WITH BOTH THE COMPLAINT AND THE FILING;

(f) INFORMATION, IF KNOWN TO THE PERSON MAKING THE COMPLAINT, IDENTIFYING EACH PERSON INVOLVED IN THE FILING, INCLUDING NAMES, STREET ADDRESSES, TELEPHONE NUMBERS, WEBSITES, AND E-MAIL ADDRESSES;

(g) INFORMATION, IF KNOWN, IDENTIFYING THE NATURE OF ANY BUSINESS OR PERSONAL RELATIONSHIP BETWEEN THE PERSON SUBMITTING THE COMPLAINT AND EACH PERSON INVOLVED IN THE ALLEGED VIOLATION;

(h) A STATEMENT BY THE PERSON SUBMITTING THE COMPLAINT, UNDER PENALTY OF PERJURY PURSUANT TO SECTION 7-90-301.5, THAT THE PERSON BELIEVES IN GOOD FAITH THAT THE FACTS STATED IN THE COMPLAINT ARE TRUE AND THAT THE COMPLAINT COMPLIES WITH THE REQUIREMENTS OF THIS PART 3, THE CONSTITUENT DOCUMENTS, AND THE ORGANIC STATUTES; AND

(i) ANY ADDITIONAL INFORMATION THAT THE PERSON BELIEVES MAY ASSIST IN AN INVESTIGATION OF THE COMPLAINT.

(3) **Review - secretary of state.** (a) UPON RECEIPT OF A COMPLAINT SUBMITTED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE SECRETARY OF STATE SHALL REVIEW THE COMPLAINT AND EVALUATE WHETHER THE COMPLAINT INDICATES A VIOLATION OF SUBSECTION (1) OF THIS SECTION AND SATISFIES THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION. IF SO, THE SECRETARY OF STATE, USING ELECTRONIC MEANS, SHALL REFER THE COMPLAINT TO THE ATTORNEY GENERAL FOR REVIEW AND INVESTIGATION UNDER THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6.

(b) IF THE SECRETARY OF STATE DETERMINES THAT THE INFORMATION PROVIDED IN A COMPLAINT DOES NOT INDICATE A VIOLATION OF SUBSECTION (1) OF THIS SECTION OR DOES NOT SATISFY THE

REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE SECRETARY OF STATE SHALL NOTIFY THE PERSON THAT SUBMITTED THE COMPLAINT OF THE FACT AND PROVIDE AN EXPLANATION OF ANY DEFICIENCIES IN THE COMPLAINT.

(c) THE SECRETARY OF STATE MAY ASK A PERSON WHO SUBMITS A COMPLAINT TO SUBMIT ADDITIONAL INFORMATION CONCERNING:

(I) THE ALLEGED VIOLATION OF SUBSECTION (1) OF THIS SECTION; OR

(II) THE PERSON'S FAILURE TO SUBMIT THE INFORMATION REQUIRED BY SUBSECTION (2) OF THIS SECTION.

(d) THE SECRETARY OF STATE SHALL NOTIFY THE PERSON WHO SUBMITTED A COMPLAINT OF THE OUTCOME OF THE SECRETARY OF STATE'S REVIEW OF THE COMPLAINT.

(e) IF THE SECRETARY OF STATE REJECTS A COMPLAINT FOR FAILURE TO COMPLY WITH SUBSECTION (1) OR (2) OF THIS SECTION, THE COMPLAINT MAY BE RESUBMITTED.

(4) Review - attorney general - hearing and findings - administrative law judge. (a) UPON RECEIPT OF A COMPLAINT REFERRED BY THE SECRETARY OF STATE IN ACCORDANCE WITH SUBSECTION (3)(a) OF THIS SECTION, THE ATTORNEY GENERAL SHALL REVIEW THE COMPLAINT AND DETERMINE WHETHER THE COMPLAINT SHOULD BE INVESTIGATED. IF THE ATTORNEY GENERAL DETERMINES THAT THE COMPLAINT SHOULD BE INVESTIGATED, THE ATTORNEY GENERAL:

(I) SHALL MAIL A WRITTEN NOTICE AND DEMAND TO THE STREET ADDRESS OR MAILING ADDRESS, IF DIFFERENT FROM THE STREET ADDRESS, AS WELL AS TO THE E-MAIL ADDRESS, IF AVAILABLE, OF THE REGISTERED AGENT OF RECORD LISTED IN THE SECRETARY OF STATE'S ONLINE FILING SYSTEM FOR THE ENTITY AT ISSUE, AND, IF A TELEPHONE NUMBER IS AVAILABLE, THE ATTORNEY GENERAL SHALL CONTACT THE REGISTERED AGENT BY TELEPHONE; AND

(II) MAY PROVIDE WRITTEN OR VERBAL NOTICE AND DEMAND TO ANY OTHER POINT OF CONTACT THAT THE ATTORNEY GENERAL DETERMINES THROUGH INVESTIGATION TO BE A MEANS BY WHICH TO REACH THE ENTITY

AT ISSUE.

(b) THE ATTORNEY GENERAL'S NOTICE AND DEMAND MUST NOTIFY THE ENTITY AT ISSUE OF THE ALLEGATIONS IN THE COMPLAINT AND DEMAND THAT THE ENTITY RESPOND TO THE COMPLAINT BY A DATE CERTAIN, WHICH RESPONSE MUST INCLUDE THE INFORMATION DESCRIBED IN SUBSECTION (4)(c) OF THIS SECTION.

(c) A PERSON TO WHOM THE ATTORNEY GENERAL SENDS A NOTICE AND DEMAND, OR THE PERSON'S AGENT, SHALL RESPOND TO THE NOTICE AND DEMAND WITHIN TWENTY-ONE DAYS AFTER THE WRITTEN NOTICE AND DEMAND IS MAILED. THE RESPONSE MUST INCLUDE THE FOLLOWING INFORMATION:

(I) THE NAME; STREET ADDRESS; TELEPHONE NUMBER; E-MAIL ADDRESS, IF AVAILABLE; AND ANY ADDITIONAL CONTACT INFORMATION OF THE PERSON RESPONDING TO THE NOTICE AND DEMAND AND, IF THE RESPONDING PERSON IS AN AGENT OF THE PERSON TO WHOM THE NOTICE AND DEMAND IS SENT, ANY SUPPORTING DOCUMENTS, INCLUDING ANY REGISTERED AGENT INFORMATION, THAT ESTABLISH THE AGENT'S AUTHORITY TO ACT ON THE PERSON'S BEHALF;

(II) THE NAME OF THE ENTITY AT ISSUE;

(III) INFORMATION, IF KNOWN, IDENTIFYING EACH PERSON INVOLVED IN THE ALLEGED VIOLATION OF SUBSECTION (1) OF THIS SECTION, INCLUDING NAMES, STREET ADDRESSES, TELEPHONE NUMBERS, WEBSITES, AND E-MAIL ADDRESSES;

(IV) INFORMATION IDENTIFYING THE NATURE OF ANY BUSINESS OR PERSONAL RELATIONSHIP BETWEEN THE PERSON THAT SUBMITTED THE COMPLAINT AND EACH PERSON INVOLVED IN THE ALLEGED VIOLATION OF SUBSECTION (1) OF THIS SECTION; EXCEPT THAT THIS SUBSECTION (4)(c)(IV) DOES NOT REQUIRE THE DISCLOSURE OF PRIVILEGED INFORMATION;

(V) A STATEMENT BY THE ENTITY AT ISSUE RESPONDING TO THE NOTICE AND DEMAND THAT AFFIRMS OR DENIES HAVING KNOWLEDGE OF OR INFORMATION ABOUT THE ALLEGED VIOLATION OF SUBSECTION (1) OF THIS SECTION;

(VI) MATERIAL EVIDENCE OF WRITTEN CONSENT TO USE THE NAME OR ADDRESS IN THE FILING AT ISSUE;

(VII) A STATEMENT BY THE PERSON RESPONDING TO THE NOTICE AND DEMAND, UNDER PENALTY OF PERJURY PURSUANT TO SECTION 7-90-301.5, THAT THE PERSON BELIEVES IN GOOD FAITH THAT THE FACTS STATED IN THE RESPONSE ARE TRUE AND THAT THE RESPONSE COMPLIES WITH THE REQUIREMENTS OF THIS PART 3, THE CONSTITUENT DOCUMENTS, AND THE ORGANIC STATUTES; AND

(VIII) ANY ADDITIONAL INFORMATION THAT THE PERSON RESPONDING TO THE NOTICE AND DEMAND BELIEVES MAY BE USEFUL IN AN INVESTIGATION OF THE COMPLAINT.

(d) ALL INFORMATION RECEIVED BY THE ATTORNEY GENERAL UNDER THIS SECTION IS GOVERNED BY SECTION 6-1-111 (2).

(e) IF, WITHIN TWENTY-ONE DAYS AFTER MAILING A NOTICE AND DEMAND, THE ATTORNEY GENERAL DOES NOT RECEIVE A RESPONSE IN WRITING OR OTHERWISE, THE ATTORNEY GENERAL SHALL SEND A SECOND NOTICE AND DEMAND, CONSISTENT WITH THE REQUIREMENTS OF THIS SUBSECTION (4), AND ALLOW TWENTY-ONE DAYS FOR A RESPONSE, WHICH MUST COMPLY WITH SUBSECTION (4)(c) OF THIS SECTION.

(f) IF THE ATTORNEY GENERAL DOES NOT RECEIVE A RESPONSE WITHIN TWENTY-ONE DAYS AFTER MAILING A SECOND NOTICE AND DEMAND AS DESCRIBED IN SUBSECTION (4)(e) OF THIS SECTION, EACH ALLEGATION IN THE NOTICE AND DEMAND IS DEEMED CONCEDED BY THE PERSON THAT DID NOT RESPOND, AND THE ATTORNEY GENERAL MAY CERTIFY THAT FACT TO THE SECRETARY OF STATE. UPON RECEIVING THE CERTIFICATION, THE SECRETARY OF STATE SHALL TAKE THE APPROPRIATE REMEDIAL ACTION UNDER SUBSECTIONS (4)(g)(V) AND (4)(g)(VI) OF THIS SECTION BASED ON THE FACTS CONCEDED TO IN THE NOTICE AND DEMAND.

(g) (I) A REQUEST IS TIMELY IF RECEIPT OF A RESPONSE AND A REQUEST FOR A HEARING ON ANY ISSUE RAISED BY THE NOTICE AND DEMAND IS MADE WITHIN TWENTY-ONE DAYS AFTER THE NOTICE AND DEMAND IS MAILED. IF A PERSON TIMELY REQUESTS A HEARING, THE ATTORNEY GENERAL MAY REFER THE COMPLAINT TO AN ADMINISTRATIVE LAW JUDGE.

(II) IF THE ATTORNEY GENERAL REFERS THE COMPLAINT TO AN ADMINISTRATIVE LAW JUDGE, THE ATTORNEY GENERAL SHALL PROSECUTE THE MATTER BEFORE THE ADMINISTRATIVE LAW JUDGE. IF THE ATTORNEY GENERAL DOES NOT REFER THE COMPLAINT TO AN ADMINISTRATIVE LAW JUDGE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE ATTORNEY GENERAL RECEIVES THE RESPONSE TO THE NOTICE AND DEMAND, THE ATTORNEY GENERAL IS DEEMED TO HAVE DETERMINED TO NOT PROCEED WITH PROSECUTING THE COMPLAINT.

(III) THE ADMINISTRATIVE LAW JUDGE SHALL HOLD A HEARING WITHIN SIXTY DAYS AFTER THE ATTORNEY GENERAL REFERS A COMPLAINT AND SHALL RENDER A DECISION WITHIN FIFTEEN DAYS AFTER THE HEARING. THE ADMINISTRATIVE LAW JUDGE MAY GRANT THE ATTORNEY GENERAL OR THE PERSON REQUESTING A HEARING AN EXTENSION OF UP TO THIRTY DAYS UPON A MOTION. THE ADMINISTRATIVE LAW JUDGE MAY GRANT THE ATTORNEY GENERAL OR THE PERSON REQUESTING A HEARING AN EXTENSION OF LONGER THAN THIRTY DAYS UPON A SHOWING OF GOOD CAUSE.

(IV) IF THE ADMINISTRATIVE LAW JUDGE FINDS THAT SUBSECTION (1) OF THIS SECTION HAS BEEN VIOLATED, THE ADMINISTRATIVE LAW JUDGE SHALL MAKE AN ADDITIONAL FINDING AS TO WHETHER:

(A) AN ENTITY WAS CREATED WITHOUT AUTHORIZATION OR FOR FRAUDULENT PURPOSES; OR

(B) AN UNAUTHORIZED FILING WAS MADE.

(V) IF THE ADMINISTRATIVE LAW JUDGE FINDS THAT, OR IF A CONCEDED NOTICE AND DEMAND SETS FORTH THAT, AN ENTITY WAS CREATED WITHOUT AUTHORIZATION OR FOR FRAUDULENT PURPOSES, THE ATTORNEY GENERAL SHALL NOTIFY THE SECRETARY OF STATE, WHO SHALL:

(A) MARK THE BUSINESS RECORD WITH A NOTICE THAT THE ENTITY IS UNAUTHORIZED OR FRAUDULENT;

(B) REDACT EACH ADDRESS AND NAME THAT WAS USED WITHOUT AUTHORIZATION FROM THE ENTITY'S FILING AND FROM ANY OTHER RELEVANT FILINGS; AND

(C) DISABLE ADDITIONAL FILING FUNCTIONALITY ON THE ENTITY'S

RECORDS.

(VI) IF THE ADMINISTRATIVE LAW JUDGE FINDS THAT, OR IF A CONCEDED NOTICE AND DEMAND SETS FORTH THAT, AN UNAUTHORIZED FILING WAS MADE FOR A LEGITIMATE ENTITY, THE ATTORNEY GENERAL SHALL NOTIFY THE SECRETARY OF STATE, WHO SHALL:

(A) MARK EACH UNAUTHORIZED FILING FOR THE ENTITY TO NOTIFY THE PUBLIC THAT THE FILING IS UNAUTHORIZED;

(B) REDACT EACH ADDRESS AND NAME THAT WAS USED WITHOUT AUTHORIZATION FROM THE ENTITY'S FILING AND FROM THE RELEVANT FILINGS; AND

(C) MARK THE BUSINESS RECORD TO NOTIFY THE PUBLIC THAT THE ENTITY HAS BEEN THE VICTIM OF FRAUDULENT OR UNAUTHORIZED ACTS.

(VII) THE DECISION OF THE ADMINISTRATIVE LAW JUDGE IS FINAL AND SUBJECT TO REVIEW BY THE COURT OF APPEALS UNDER SECTION 24-4-106 (11). THE SECRETARY OF STATE AND THE ADMINISTRATIVE LAW JUDGE ARE NOT NECESSARY PARTIES TO THE REVIEW.

(h) THE ATTORNEY GENERAL SHALL COMMUNICATE THE FINDING MADE BY THE ADMINISTRATIVE LAW JUDGE IN ACCORDANCE WITH SUBSECTION (4)(g)(IV) OF THIS SECTION TO:

(I) THE PERSON WHO SUBMITTED THE COMPLAINT, USING THE E-MAIL ADDRESS PROVIDED ON THE COMPLAINT FORM OR, IF AN E-MAIL ADDRESS WAS NOT PROVIDED, USING THE MAILING ADDRESS PROVIDED ON THE COMPLAINT FORM; AND

(II) EACH ENTITY AT ISSUE, USING REGISTERED MAIL ADDRESSED TO THE STREET ADDRESS OR MAILING ADDRESS, IF DIFFERENT, OF THE REGISTERED AGENT OF RECORD FOR THE ENTITY LISTED IN THE SECRETARY OF STATE'S ONLINE FILING SYSTEM AND TO THE E-MAIL ADDRESS LISTED, IF PROVIDED; AND

(III) THE SECRETARY OF STATE.

(5) A VIOLATION OF SUBSECTION (1) OF THIS SECTION IS A DECEPTIVE

TRADE PRACTICE UNDER SECTION 6-1-105 (1)(ppp) AND IS SUBJECT TO ENFORCEMENT BY THE DEPARTMENT OF LAW IN ADDITION TO THE ENFORCEMENT DESCRIBED IN THIS SECTION. A DETERMINATION BY THE ADMINISTRATIVE LAW JUDGE AS PROVIDED BY SUBSECTION (4)(g)(IV) OF THIS SECTION OR A FAILURE TO TIMELY RESPOND TO A NOTICE AND DEMAND AS PROVIDED BY SUBSECTION (4)(f) OF THIS SECTION CONSTITUTES A PRIMA FACIE SHOWING THAT SUBSECTION (1) OF THIS SECTION WAS VIOLATED.

7-90-315. Working group - report - repeal. (1) THE WORKING GROUP TO STUDY MEASURES TO COUNTERACT FRAUDULENT FILINGS IN THE ONLINE BUSINESS FILING SYSTEM, REFERRED TO IN THIS SECTION AS THE "WORKING GROUP", IS HEREBY CREATED TO STUDY POTENTIAL MEASURES TO COUNTERACT AND PREVENT FRAUDULENT FILINGS IN THE ONLINE BUSINESS FILING SYSTEM. THE SECRETARY OF STATE'S DESIGNEE SHALL CONVENE THE WORKING GROUP BY SEPTEMBER 15, 2022.

(2) (a) THE WORKING GROUP CONSISTS OF:

(I) THE SECRETARY OF STATE'S DESIGNEE;

(II) TWO REPRESENTATIVES OF THE SECRETARY OF STATE'S OFFICE WITH FAMILIARITY WITH THE ONLINE BUSINESS FILING SYSTEM, APPOINTED BY THE SECRETARY OF STATE;

(III) A REPRESENTATIVE FROM THE ATTORNEY GENERAL'S OFFICE, APPOINTED BY THE ATTORNEY GENERAL;

(IV) A REPRESENTATIVE FROM THE COLORADO BUREAU OF INVESTIGATION, APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY;

(V) A REPRESENTATIVE OF THE DEPARTMENT OF HOMELAND SECURITY, APPOINTED BY THE SPEAKER OF THE COLORADO HOUSE OF REPRESENTATIVES;

(VI) TWO REPRESENTATIVES FROM STATE OR LOCAL BUSINESS ASSOCIATIONS OR CHAMBERS OF COMMERCE, APPOINTED BY THE PRESIDENT OF THE COLORADO SENATE;

(VII) A REPRESENTATIVE OF AN ECONOMIC DEVELOPMENT

ORGANIZATION, APPOINTED BY THE SPEAKER OF THE COLORADO HOUSE OF REPRESENTATIVES;

(VIII) A REPRESENTATIVE OF THE COLORADO BAR ASSOCIATION WITH EXPERTISE IN BUSINESS LAW, APPOINTED BY THE COLORADO BAR ASSOCIATION; AND

(IX) A MEMBER OF THE PUBLIC WHO IS A BUSINESS OWNER, PREFERABLY WHO HAS BEEN THE VICTIM OF A FRAUDULENT BUSINESS FILING, APPOINTED BY THE SECRETARY OF STATE.

(b) THE SECRETARY OF STATE'S DESIGNEE MAY ALSO INVITE ADDITIONAL REPRESENTATIVES TO ATTEND WORKING GROUP MEETINGS AND PARTICIPATE AS NONVOTING MEMBERS.

(3) THE WORKING GROUP SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY BY JANUARY 31, 2023, CONTAINING POTENTIAL LEGISLATIVE PROVISIONS TO COUNTERACT AND PREVENT FRAUDULENT FILINGS, AS WELL AS THE COSTS AND BENEFITS ASSOCIATED WITH EACH POTENTIAL LEGISLATIVE PROVISION. THE REPORT MAY INCLUDE SPECIFIC RECOMMENDATIONS TO THE GENERAL ASSEMBLY.

(4) EXCEPT FOR COMPENSATION DRAWN AS A PART OF NORMAL EMPLOYMENT, MEMBERS OF THE WORKING GROUP DO NOT RECEIVE COMPENSATION FOR PARTICIPATION IN THE WORKING GROUP.

(5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2023.

SECTION 2. In Colorado Revised Statutes, 6-1-105, add (1)(ppp) as follows:

6-1-105. Unfair or deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(ppp) VIOLATES SECTION 7-90-314 (1).

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect February 1, 2023; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state

constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect February 1, 2023, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to complaints submitted and offenses committed on or after the applicable effective date of this act.



Steve Fenberg
PRESIDENT OF
THE SENATE



Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE



Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED June 2nd 2022 at 3:10 pm
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

Appendix D: Senate Bill 12-123

An Act

SENATE BILL 12-123

BY SENATOR(S) Renfroe, Brophy, Cadman, Grantham, Harvey, King K., King S., Lambert, Lundberg, Mitchell, Neville, Roberts, Scheffel, Steadman, White, Newell;
also REPRESENTATIVE(S) Brown, Acree, Barker, Coram, Fields, Gardner B., Kerr J., Labuda, Pabon, Priola, Todd.

CONCERNING THE SECRETARY OF STATE'S ON-LINE BUSINESS FILING SYSTEM, AND, IN CONNECTION THEREWITH, AUTHORIZING ENHANCEMENTS TO THE SYSTEM, THE DESIGNATION OF COMMERCIAL REGISTERED AGENTS, AND CHANGES TO A REPORTING ENTITY'S ANNIVERSARY MONTH AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 24-21-111.5 as follows:

24-21-111.5. Electronic filing system - improvements - integration with other systems. (1) AT THE EARLIEST PRACTICABLE DATE, THE SECRETARY OF STATE SHALL DEVELOP AND IMPLEMENT ENHANCEMENTS TO THE ON-LINE BUSINESS FILING INFORMATION SYSTEMS. THE ENHANCEMENTS MUST INCLUDE AT LEAST THE FOLLOWING:

(a) ENHANCEMENTS TO USER ACCOUNTS THAT:

(I) ALLOW FOR THE ASSOCIATION OF MULTIPLE BUSINESS RECORDS IN ONE ACCOUNT;

(II) ALLOW A USER TO FILE MULTIPLE DOCUMENTS AT ONE TIME;

(III) CREATE A SYSTEM THAT ALLOWS A USER TO PAY FOR MULTIPLE FILINGS AT ONE TIME; AND

(IV) CREATE, AT THE SECRETARY'S DISCRETION, THE ABILITY FOR A USER TO STORE PAYMENT INFORMATION, VIEW THE USER'S BALANCE, VIEW THE USER'S TRANSACTION HISTORY, AND ADD MONEY TO THE USER'S ACCOUNT;

(b) ENHANCEMENTS FOR REGISTERED AGENTS AND TO RECORD MANAGEMENT SYSTEMS THAT ALLOW A REGISTERED AGENT TO QUICKLY IDENTIFY THE BUSINESS ENTITIES AND CHARITABLE ORGANIZATIONS FOR WHICH THE REGISTERED AGENT IS LISTED AND TO DETERMINE WHEN REPORTS ARE DUE;

(c) ENHANCEMENTS FOR EXTERNAL CERTIFICATIONS THAT ALLOW USERS TO OBTAIN CERTIFIED DOCUMENTS, CERTIFICATES OF FACT, AND ANY OTHER SIMILAR AUTHENTICATIONS THAT THE SECRETARY DEEMS NECESSARY;

(d) ENHANCEMENTS THAT ALLOW FOR THE ON-LINE FILING OF DOCUMENTS THAT WOULD GUIDE THE USER THROUGH THE FILING PROCESS;

(e) ENHANCEMENTS THAT ALLOW FOR THE INTEGRATION OF ANY DOCUMENTS FILED PURSUANT TO TITLE 7, C.R.S., WITH ANY DOCUMENTS FILED PURSUANT TO ARTICLE 16 OF TITLE 6, C.R.S., AS WELL AS ANY CHANGES THE SECRETARY DEEMS NECESSARY TO IMPLEMENT SUCH INTEGRATION, INCLUDING CHANGES INVOLVING THE FILING OF REGISTRATION STATEMENTS, AMENDMENTS, AND RENEWALS, AND CHANGES TO THE SEARCH FUNCTION; AND

(f) ENHANCEMENTS THAT ALLOW USERS GREATER SEARCH FUNCTIONALITY, PROVIDE MORE USEFUL AND SPECIFIC SEARCH RESULTS, AND ALLOW FOR GREATER USABILITY.

SECTION 2. In Colorado Revised Statutes, 7-90-102, **amend** (55); and **add** (3.8) as follows:

7-90-102. Definitions. As used in this title, except as otherwise defined for the purpose of any section, subpart, part, or article of this title, or unless the context otherwise requires:

(3.8) "COMMERCIAL REGISTERED AGENT" MEANS A REGISTERED AGENT WHO HAS FILED THE APPROPRIATE DOCUMENTATION WITH THE SECRETARY OF STATE TO BECOME LISTED AS A COMMERCIAL REGISTERED AGENT PURSUANT TO SECTION 7-90-707.

(55) "Registered agent" means the registered agent required to be maintained by an entity pursuant to part 7 of this article or appointed pursuant to article 70 of this title. "REGISTERED AGENT" INCLUDES A COMMERCIAL REGISTERED AGENT.

SECTION 3. In Colorado Revised Statutes, 7-90-305, **amend** (2) (a) as follows:

7-90-305. Correcting filed document. (2) A statement of correction:

(a) Shall state the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, shall state the true name of the entity, or, in the case of a trade name, shall state the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any other document relating to a statement of trademark registration, shall identify the statement of trademark registration in a manner satisfactory to the secretary of state, OR, IN THE CASE OF A COMMERCIAL REGISTERED AGENT, SHALL STATE THE NAME OF THE COMMERCIAL REGISTERED AGENT AS REFLECTED IN THE RECORDS OF THE SECRETARY OF STATE;

SECTION 4. In Colorado Revised Statutes, 7-90-305.5, **amend** (2) (a) as follows:

7-90-305.5. Statement of change. (2) A filed document is changed by causing to be delivered to the secretary of state, for filing pursuant to this

part 3, a statement of change that:

(a) States the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, states the true name of the entity, or, in the case of a trade name, states the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any document relating to a statement of trademark registration, identifies the statement of trademark registration in a manner satisfactory to the secretary of state, OR, IN THE CASE OF A COMMERCIAL REGISTERED AGENT, STATES THE NAME OF THE COMMERCIAL REGISTERED AGENT AS REFLECTED IN THE RECORDS OF THE SECRETARY OF STATE;

SECTION 5. In Colorado Revised Statutes, 7-90-703, **amend** (1) as follows:

7-90-703. Correction of registered agent. (1) A registered agent may correct either or both its registered agent address and registered agent name as contained in a document on file in the office of the secretary of state, if such information was incorrect when that document was delivered for filing, by causing to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of correction that, in addition to the information required to be stated in the statement of correction pursuant to section 7-90-305, states that notice of the correction has been delivered to:

(a) The entity; OR

(b) IF THE STATEMENT OF CORRECTION IS DELIVERED FOR FILING ON BEHALF OF A COMMERCIAL REGISTERED AGENT, EACH ENTITY AND TRADEMARK REGISTRANT THAT THE COMMERCIAL REGISTERED AGENT REPRESENTS. THE FILING OF A STATEMENT OF CORRECTION DELIVERED ON BEHALF OF A COMMERCIAL REGISTERED AGENT PURSUANT TO THIS SUBSECTION (1) IS EFFECTIVE TO CORRECT THE INFORMATION REGARDING THE COMMERCIAL REGISTERED AGENT WITH RESPECT TO EACH ENTITY AND TRADEMARK REGISTRANT REPRESENTED BY THE COMMERCIAL REGISTERED AGENT.

SECTION 6. In Colorado Revised Statutes, **add** 7-90-707, 7-90-708, 7-90-709, and 7-90-710 as follows:

7-90-707. Commercial registered agent. (1) A REGISTERED AGENT MAY BECOME LISTED AS A COMMERCIAL REGISTERED AGENT BY DELIVERING A COMMERCIAL REGISTERED AGENT LISTING STATEMENT TO THE SECRETARY OF STATE FOR FILING PURSUANT TO PART 3 OF THIS ARTICLE. THE STATEMENT MUST INCLUDE THE REGISTERED AGENT NAME AND REGISTERED AGENT ADDRESS OF THE REGISTERED AGENT AND THE E-MAIL ADDRESS OF THE REGISTERED AGENT THAT WILL BE USED TO RECEIVE NOTIFICATIONS FROM THE SECRETARY OF STATE.

(2) THE STATEMENT MUST BE ACCOMPANIED BY A LIST OF THE ENTITIES REPRESENTED BY THE REGISTERED AGENT AT THE TIME THE STATEMENT IS FILED. IF THE REGISTERED AGENT IS APPOINTED AS AN AGENT FOR A TRADEMARK REGISTRANT WHO IS AN INDIVIDUAL WHO IS NOT A RESIDENT OF THIS STATE, THE REGISTERED AGENT SHALL IDENTIFY THE STATEMENT OF TRADEMARK REGISTRATION TO THE SATISFACTION OF THE SECRETARY OF STATE.

(3) A COMMERCIAL REGISTERED AGENT LISTING STATEMENT MUST NOT STATE A DELAYED EFFECTIVE DATE.

7-90-708. Termination of commercial registered agent listing.

(1) A COMMERCIAL REGISTERED AGENT MAY TERMINATE ITS LISTING AS A COMMERCIAL REGISTERED AGENT BY DELIVERING A COMMERCIAL REGISTERED AGENT TERMINATION STATEMENT TO THE SECRETARY OF STATE FOR FILING PURSUANT TO PART 3 OF THIS ARTICLE. THE STATEMENT MUST INCLUDE:

(a) THE NAME OF THE REGISTERED AGENT AS REFLECTED IN THE RECORDS OF THE SECRETARY OF STATE AT THE TIME THE STATEMENT IS FILED;

(b) A STATEMENT INDICATING THAT THE COMMERCIAL REGISTERED AGENT NO LONGER SERVES AS A COMMERCIAL REGISTERED AGENT IN THIS STATE; AND

(c) A STATEMENT INDICATING THAT NOTICE OF THE TERMINATION HAS BEEN DELIVERED TO EACH ENTITY AND TRADEMARK REGISTRANT THAT THE COMMERCIAL REGISTERED AGENT REPRESENTS.

(2) NOTWITHSTANDING SECTION 7-90-304, A COMMERCIAL REGISTERED AGENT TERMINATION STATEMENT IS EFFECTIVE ON THE THIRTY-FIRST DAY FOLLOWING THE DAY THAT THE COMMERCIAL REGISTERED AGENT TERMINATION STATEMENT IS FILED IN THE RECORDS OF THE SECRETARY OF STATE OR ON A DELAYED EFFECTIVE DATE STATED IN THE COMMERCIAL REGISTERED AGENT TERMINATION STATEMENT THAT IS NOT EARLIER THAN THE THIRTY-FIRST DAY AND NOT LATER THAN THE NINETIETH DAY FOLLOWING THE DAY THE COMMERCIAL REGISTERED AGENT TERMINATION STATEMENT IS FILED IN THE RECORDS OF THE SECRETARY OF STATE.

(3) A COMMERCIAL REGISTERED AGENT CEASES TO BE THE AGENT FOR SERVICE OF PROCESS FOR AN ENTITY AND TRADEMARK REGISTRANT FORMERLY REPRESENTED BY THE COMMERCIAL REGISTERED AGENT WHEN THE TERMINATION STATEMENT BECOMES EFFECTIVE. IF AN ENTITY OR TRADEMARK REGISTRANT REPRESENTED BY THE PERSON THAT IS RESIGNING AS A COMMERCIAL REGISTERED AGENT APPOINTS A REGISTERED AGENT BEFORE THE EFFECTIVE DATE OF THE TERMINATION STATEMENT, THE COMMERCIAL REGISTERED AGENT CEASES TO BE THE AGENT FOR THAT ENTITY OR TRADEMARK REGISTRANT ON THE EFFECTIVE DATE OF THE APPOINTMENT OF THE NEW REGISTERED AGENT.

7-90-709. Change of commercial registered agent name or address. (1) IF A COMMERCIAL REGISTERED AGENT CHANGES ITS REGISTERED AGENT NAME OR ITS REGISTERED AGENT ADDRESS, THE COMMERCIAL REGISTERED AGENT SHALL DELIVER TO THE SECRETARY OF STATE, FOR FILING PURSUANT TO PART 3 OF THIS ARTICLE, A STATEMENT OF CHANGE THAT STATES, IN ADDITION TO THE INFORMATION REQUIRED BY SECTION 7-90-305.5, THAT THE COMMERCIAL REGISTERED AGENT HAS DELIVERED NOTICE OF THE CHANGE TO EACH ENTITY AND TRADEMARK REGISTRANT REPRESENTED BY THE COMMERCIAL REGISTERED AGENT.

(2) THE FILING OF A STATEMENT OF CHANGE PURSUANT TO THIS SECTION IS EFFECTIVE TO CHANGE THE INFORMATION REGARDING THE COMMERCIAL REGISTERED AGENT WITH RESPECT TO EACH ENTITY AND TRADEMARK REGISTRANT REPRESENTED BY THE COMMERCIAL REGISTERED AGENT.

7-90-710. Listing of entities represented by commercial registered agents. THE SECRETARY OF STATE SHALL MAKE AVAILABLE UPON

REQUEST A LIST OF FILINGS MADE DURING THE PREVIOUS MONTH THAT CONTAIN THE NAME OF A COMMERCIAL REGISTERED AGENT. THE SECRETARY OF STATE MAY ASSESS A FEE FOR THE REQUESTED LISTS.

SECTION 7. In Colorado Revised Statutes, 7-90-501, **amend** (4) (c) (II) as follows:

7-90-501. Periodic reports. (4) (c) (II) ~~The secretary of state may permit, on such conditions as the secretary of state may determine, A reporting entity to MAY, AT THE TIME OF FILING THE CONSTITUENT FILED DOCUMENT OR THE PERIODIC REPORT, select an anniversary month different than the anniversary month as established in subparagraph (I) of this paragraph (c). by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of election of alternative anniversary month~~ IF AN ENTITY ELECTS TO CHANGE ITS ANNIVERSARY MONTH PURSUANT TO THIS SUBPARAGRAPH (II), THAT ENTITY MAY NOT SUBSEQUENTLY CHANGE ITS ANNIVERSARY MONTH FOR A PERIOD OF AT LEAST ONE YEAR.

SECTION 8. In Colorado Revised Statutes, **add** 24-21-113 as follows:

24-21-113. Secretary of state business software licensing - business computer systems maintenance and enhancement cash fund.

(1) THE SECRETARY OF STATE MAY CHARGE FEES FOR THE LICENSING OR SALE OF BUSINESS AND LICENSING SOFTWARE DEVELOPED BY THE DEPARTMENT OF STATE.

(2) THE SECRETARY OF STATE SHALL TRANSMIT ALL FEES COLLECTED PURSUANT TO SUBSECTION (1) OF THIS SECTION TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE BUSINESS COMPUTER SYSTEMS MAINTENANCE AND ENHANCEMENT CASH FUND, WHICH FUND IS HEREBY CREATED. THE SECRETARY OF STATE SHALL USE THE MONEYS CREDITED TO THE FUND ONLY FOR THE MAINTENANCE OR ENHANCEMENT OF THE DEPARTMENT OF STATE'S BUSINESS COMPUTER SYSTEMS. MONEYS TRANSFERRED TO THE FUND SHALL NOT BE DEPOSITED IN OR TRANSFERRED TO THE GENERAL FUND OF THIS STATE OR ANY OTHER FUND. THE MONEYS CREDITED TO THE FUND ARE AVAILABLE FOR APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF STATE IN THE GENERAL APPROPRIATION BILL.

SECTION 9. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the department of state cash fund created in section 24-21-104 (3) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of state, for the fiscal year beginning July 1, 2012, the sum of \$525,788, or so much thereof as may be necessary, for allocation to information technology services for contract computer programming services related to the implementation of this act.

SECTION 10. Effective date. This act takes effect upon passage; except that sections 2 through 7 of this act take effect ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement said sections.

SECTION 11. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO