



M E M O R A N D U M

To: Members of the Working Group on Fraudulent Business Filings

From: Chris Beall

Date: January 6, 2023

Re: List of proposed recommendations to be voted upon

This memo lays out the proposed recommendations on which I will call for specific, individual votes at our upcoming meetings. I hope this list provides clarity and avoids confusion by presenting the text of the specific proposed recommendations. But, of course, any Working Group member should feel free to seek revision of the wording of what I've listed here.

{Please refer to the Excel matrix that Member Carla Hoke prepared for the background information related to each of the listed potential recommendations.}

Proposed Recommendation	Vote
Recommendations to the SoS	
1. <u>SBF for new entities</u> The Working Group recommends to the Department of State that it should require mandatory enrollment in the Secure Business Filing password-protection program as a default setting for the creation of a new entity.	Yes:___ No: ___
2. <u>SBF for any new filing</u> The Working Group recommends to the Department of State that it should require mandatory enrollment in the Secure Business Filing password-protection program as a default setting for any filing in the business registry (not just for the creation of a new entity).	Yes:___ No: ___
3. <u>SBF for all entities</u> The Working Group recommends to the Department of State that it should implement mandatory password-protection on the accounts of all entities in the business registry that are not currently enrolled in the Secure Business Filing program, with automatically generated initial passwords to be sent to an entity's last known address.	Yes:___ No: ___

Proposed Recommendation		Vote
4.	<u>Publicity for SBF program</u> The Working Group recommends to the Department of State that it should publicize more broadly the Secure Business Filing password-protection program, including by highlighting it in the document forms themselves, as part of the filing process, and on the SOS website.	Yes: ___ No: ___
5.	<u>Update business forms to eliminate ambiguity</u> The Working Group recommends to the Department of State that it should update its business filing forms to eliminate any ambiguity regarding which information is required at time of filing.	Yes: ___ No: ___
6.	<u>Website page on security features</u> 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.	Yes: ___ No: ___
7.	<u>Publicize business-identity theft resources</u> The Working Group recommends to the Department of State that it publicize more broadly the business-identity theft resources available on the SOS website.	Yes: ___ No: ___
8.	<u>Publicize SB22-034 complaint process</u> The Working Group recommends to the Department of State that it publicize more broadly the availability of the new complaint process established in SB22-034 (§ 7-90-314(2), C.R.S.).	Yes: ___ No: ___
9.	<u>Publicize availability of email & text notifications</u> The Working Group recommends to the Department of State that it publicize more broadly the availability of receiving email or text notifications when business filings are made.	Yes: ___ No: ___
10.	<u>Encourage business to self-protect</u> The Working Group recommends to the Department of State that it educate and encourage business to: (a) seek federal trademark protection for their names and their goods and services, and (b) record their federally registered trademarks with the U.S. Customs and Border Protection Service.	Yes: ___ No: ___
11.	<u>Educate public to use care with business registry data</u> 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' filing history to ensure that a proper understanding of what those data show, including the potential for unauthorized or suspicious changes.	Yes: ___ No: ___

Proposed Recommendation		Vote
12.	<u>Create a tip-reporting form on the SOS website</u> The Working Group recommends to the Department of State that it create a public webform on the SOS website that allows the public to submit tips about businesses that they suspect are using false information in business filings.	Yes: ___ No: ___
13.	<u>Real-time data sharing with law enforcement</u> The Working Group recommends to the Department of State that it direct the office to develop a technological mechanism by which the Colorado Bureau of Investigation is provided with real-time data access to all business filing information, including IP addresses used by filers, their credit card information, and their filing data.	Yes: ___ No: ___
14.	<u>Revise guidance on “deceptively similar” business names</u> The Working Group recommends to the Department of State that it direct the office to revise the guidance on determining when a new entity’s name is “deceptively similar” to an existing entity to make the standards broader and to prevent confusingly similar names.	Yes: ___ No: ___
<u>Recommendations to the General Assembly</u>		
15.	<u>Increase requirements to be a registered agent – Voter registration</u> The Working Group recommends to the General Assembly that it enact statutory changes to require that a registered agent that is a human being be a Colorado registered voter.	Yes: ___ No: ___
16.	<u>Increase requirements to be a registered agent – DMV license or ID</u> The Working Group recommends to the General Assembly that it enact statutory changes to require that a registered agent that is a human being hold a current, valid Colorado driver’s license or state identification.	Yes: ___ No: ___
17.	<u>Increase requirements to be a registered agent – Good standing</u> 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 a human being) be currently listed in good standing on the Colorado business registry.	Yes: ___ No: ___
18.	<u>Tighten definition of “usual place of business”</u> The Working Group recommends to the General Assembly that it enact statutory changes to require that a registered agent’s “usual place of business” must be a physical Colorado address at which an employee of the registered agent is physically present during regular business hours to accept service, including a prohibition against the use of post office box addresses.	Yes: ___ No: ___

Proposed Recommendation		Vote
19.	<u>Authenticate identity of registered agents</u> The Working Group recommends to the General Assembly that it enact statutory changes to require the SOS office to use a third-party commercial service to authenticate the identity of a registered agent.	Yes: ___ No: ___
20.	<u>Authenticate physical location of entity's principal office address</u> The Working Group recommends to the General Assembly that it enact statutory changes to require the SOS office to authenticate the physical location listed as an entity's principal office address by mailing a unique code to the principal office's address and requiring the business to enter that code into the business filing system. Consequences: a. Entity filing is not accepted until code is entered. b. Entity filing is accepted with notation "physical address not verified" until code is entered.	Yes: ___ No: ___ a. Yes: ___ No: ___ b. Yes: ___ No: ___
21.	<u>Suspend ability to generate good standing certificates</u> The Working Group recommends to the General Assembly that it enact statutory changes to prohibit the issuance of a certificate of good standing for an entity that is under law enforcement suspicion for using false information in its business filings.	Yes: ___ No: ___
22.	<u>Change status of business entity to "under review"</u> The Working Group recommends to the General Assembly that it enact statutory changes to require that a business entity's status is listed as "under review" upon notification from law enforcement of suspicion that the entity has used false information in its business filings.	Yes: ___ No: ___
23.	<u>Broaden who can start an SB22-034 complaint process – SOS Office</u> 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 SB22-034 (§ 7-90-314) to allow the SOS office to initiate its own complaint against a business, thereby triggering the notice procedure in the statute.	Yes: ___ No: ___
24.	<u>Broaden who can start an SB22-034 complaint process – Law enforcement</u> 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 SB22-034 (§ 7-90-314) to allow law enforcement agencies to initiate their own complaints against a business, thereby triggering the notice procedure in the statute.	Yes: ___ No: ___

Proposed Recommendation		Vote
25.	<u>Broaden the bases for the SB22-034 complaint process</u> The Working Group recommends to the General Assembly that it enact statutory changes to broaden the available bases for submitting a complaint through the business filing complaint process in SB22-034 (§ 7-90-314) to encompass not just a false name or a false address but also any other false information in a business filing.	Yes: ___ No: ___
26.	<u>Suspend filing ability for delinquent or dissolved entities</u> 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 or dissolved for a period of time until that entity submits an affidavit under penalty of perjury from a person in Colorado attesting to their authority to act for the entity and providing a copy of a photo ID. Potential time period: a. Two years b. Three years c. Five years d. Other number of years: ___	Yes: ___ No: ___ a. Yes: ___ No: ___ b. Yes: ___ No: ___ c. Yes: ___ No: ___ d. Yes: ___ No: ___
27.	<u>Require multi-factor authentication for filing changes</u> The Working Group recommends to the General Assembly that it enact statutory changes to require the use of multi-factor authentication for an entity to make a filing change.	Yes: ___ No: ___
28.	<u>Limit mass filings</u> The Working Group recommends to the General Assembly that it enact statutory changes to require the SOS office to suspend or flag mass filings that come from the same IP address.	Yes: ___ No: ___
29.	<u>Change terminology of “good standing”</u> The Working Group recommends to the General Assembly that it enact statutory changes to replace the phrase “good standing” with “existing” in the listing of a business entity’s status and in any certificates generated for the business entity.	Yes: ___ No: ___
30.	<u>Impose “know your client” requirements on registered agents</u> The Working Group recommends to the General Assembly that it enact statutory changes to require registered agents to obtain full ID information of the principals of the client for whom they serve as a registered agent and to retain that information for a minimum of five years.	Yes: ___ No: ___

Proposed Recommendation		Vote
31.	<u>Clarify existing perjury statement in each business filing</u> The Working Group recommends to the General Assembly that it enact statutory changes to clarify the perjury penalty based on the act of causing a document to be delivered for filing with the business registry that does not meet the requirements of § 7-90-301.5, C.R.S.	Yes: ___ No: ___
32.	<u>Increase criminal penalties for false filings</u> The Working Group recommends to the General Assembly that it enact statutory changes to increase the current criminal penalties for false business filings.	Yes: ___ No: ___
33.	<u>Make false filings a felony offense</u> The Working Group recommends to the General Assembly that it enact statutory changes to make a false business filing made with intent to defraud a felony offense.	Yes: ___ No: ___

New Proposals Offered During Meeting

34.		Yes: ___ No: ___
35.		Yes: ___ No: ___
36.		Yes: ___ No: ___
37.		Yes: ___ No: ___