STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State
Mike Hardin
Director, Business & Licensing Division

REPORT OF THE FRAUDULENT FILINGS WORKING GROUP

JANUARY 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 ~~curtail~~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 SOS's online filing system, as authorized by section 24-21-11, 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 becomes 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."

Table of Contents

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 ~~must~~ 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 ~~eleven~~ twelve (~~11~~12) times (*see* Appendix B). This Report is a compilation of the proposals made by the Working Group in those public meetings. The Working Group solicited ideas from the public.

Commented [CH1]: This is subject to further revision.

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 ~~identity theft~~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.

   The Department of State currently maintains over 2.4 million business records with over 920,000 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.

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 unknown. 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 listed. 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 file a Statement Curing Delinquency to bring the entity back in to 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 ~~educate~~encourage businesses to consult with legal counsel or other advisers concerning ~~their options~~the potential advantages or disadvantages of: (a) seeking state or federal trademark protection for their names and their goods and services; and (b) recording ~~their~~ 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 ~~weigh~~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. I 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 many undoubtedly 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 having a usual place of business in this state; or

(c) A foreign entity authorized to transact business or conduct activities in this state having a usual place of business in this state

Commented [CH2]: Based on 2/1/2023 WG discussion.

Commented [CH3]: Changed the phrase "**business registry**" to simply "**records**" to be consistent with:

1. the preceding section (1) which refers to a "document . . . on file in the records of the secretary of state . . . [.]"; and

(2) The rest of Title 7 which does not use "business registry" or "registry".

WHICH IS IN GOOD STANDING AS LISTED IN THE SECRETARY OF STATE'S RECORDS.

(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.

Commented [CH4]: See above comment.

d. **Costs**:

~~i.~~ 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.

Formatted: Indent: Left: 0.75", No bullets or numbering

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**:

~~i.~~ This recommendation will require changes to the existing online business filing system to verify the status of an entity listed as a registered agent.

~~ii. Changes to the filing system must ensure that the provided photo ID image is not published online.~~

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.

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

Commented [CH5]: ✓ Herrick's recommended revisions to section 7-90-701, C.R.S. in Report section 1.c above cover both individuals and entities serving as registered agents.

Formatted: Indent: Left: 0.83", No bullets or numbering

Commented [CH6]: ✓ Removed and added to Report section 1.d above.

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) OF SECTION 7-90-102, THE TERM "USUAL PLACE OF BUSINESS" MEANS A PLACE IN THIS STATE THAT IS CUSTOMARILY OPEN DURING NORMAL BUSINESS HOURS WHERE AN INDIVIDUAL IS GENERALLY PRESENT 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. 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).

Commented [CH7]: Based on 2/1/2023 WG discussion.

Commented [CH8]: "Customarily open" based on 2/1/2023 WG discussion.

Commented [CH9]: "Individual is generally present" based on 2/1/2023 WG discussion.

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. ~~SUSPEND ABILITY TO GENERATE GOOD STANDING CERTIFICATES~~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 ~~further remedy and prohibit the automatic generation of a certificate of good standing~~ authorize the SOS to change an entity's status to Delinquent in the business registry immediately following the conclusion of the ~~administration~~ administrative process if there is a finding ~~of a filing of false information in its business filing~~ that an entity was created without authorization or for fraudulent purposes.

b. **Basis**:

i. ~~As codified, SB 22-034 authorizes the Secretary of State to disable the filing capability for entities determined to be created without authorization or for fraudulent purposes.~~ Sections 7-90-314(4)(g)(iv)(a) and (v), C.R.S., provide:

> (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 ~~authorized~~authorization or for fraudulent purposes. . . [.]
>
> * * *
>
> (v) If the administrative law judge finds that, or if a conceded notice and demand sets forth that, an~~d~~ 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 of the entity's records.

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, ~~it takes approximately 400 days before the entity becomes Delinquent . In~~ in the intervening period, in some cases, ~~the~~an entity's status on the website may still show as "Good" ~~can still benefit from having Good Standing status and is able to generate a certificate of good standing~~.

iv. Authorizing the Secretary of State to also immediately change the entity's status to Delinquent will ~~terminate the entity's ability to generate certificates of good standing, which fraudulent businesses frequently use to obtain loans and other financial assistance~~ provides

public notice and is consistent with the fact that the entity's ability to generate a 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. (see above) to also authorize the Department of State to change the entity's status to Delinquent.

ii. Note: This recommendation is only intended to ~~suspend the ability to generate certificates of good standing for~~ immediately change the status of businesses that have been certified to be unauthorized or fraudulent under sections 7-90-314(4)(g)(iv)(a) and (v), C.R.S. This recommendation is not intended for legitimate registered businesses that have been "hijacked" by a fraudster filing one or more unauthorized filings. Section 7-90-314(4)(g)(iv)(b) and (vi), C.R.S.

iii. This recommendation also includes changing the grounds for delinquency in section 7-90-901, C.R.S

d. **Costs**: May require changes to the existing online business filing system.

e. **Benefits**: ~~Cutting off the ability of a fraudulent business to generate certificate of good standing and~~ Immediately changing ~~its~~ a business's ~~statues~~ status to Delinquent may improve the accuracy of information in the business registry, provide important public notice, and decrease~~d~~ 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, 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 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.

Commented [CH10]: Recommend specifying "individual" since a "person" includes a business entity and we need a human being to submit the affidavit. . . .

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 in to 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".

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 is 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 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.

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."

d. **Costs**:

i. This recommendation requires the development of a new form or modification of the existing Articles of 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 is 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 ~~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 section 7-90-301.5, C.R.S.~~statement affirmed by filers when submitting a document to the SOS.

Commented [CH11]: RESOLVED at 1/30/2023 WG meeting: Take out reference to "penalty".

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) from physically signing 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 penalty 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 belief in good faith, not actual knowledge, that the document "is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing" and that the document 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 may deter some filers with fraudulent intent.

9. **FUND 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 12-124.

b. **Basis**:

c. **Legislative Changes**:

d. **Costs**:

e. **Benefits:**

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, ~~Adjunct Professor of Law, Sturm College of Law, University of Denver & Attorney,~~ 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 18, 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