



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 98
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Rulli

Nick Thomas, Research Analyst

SUMMARY

Fraudulent filings

- Generally prohibits filings under the Commercial Transactions Law or the Corporations and Partnerships Law that include the name or address of another person without their consent or that are submitted by a person that lacks authority to make the filing (i.e., “fraudulent filings”).
- Authorizes any person who believes they have been impacted by a fraudulent finding to file a complaint with the Secretary of State (SOS).
- Requires the SOS to review each complaint and forward any likely violations to the Attorney General (AG).
- Requires the AG, upon deciding to investigate a complaint, to send a notice and demand to the person who has allegedly made the fraudulent filing.
- Requires a person who receives such a notice and demand to respond to the allegations within 21 days.
- Allows a person who is alleged to have made a fraudulent filing to request a hearing on the matter.
- Requires the SOS to cancel or invalidate filings that are determined to be fraudulent or unauthorized.
- Specifies that a fraudulent filing is a violation of the Consumer Sales Practices Act.

Statutory agents

- Requires a statutory agent appointment to include the address of the agent’s primary residence or usual place of business in this state.
- Specifies that a post office box does not qualify as a valid address for a statutory agent.

Limitation on reinstating certain business entities

- Limits the period in which corporations, associations, and limited liability companies can be reinstated to two years from the date on which the entity was abolished.

Solicitations related to public records

- Requires persons making solicitations regarding public documents filed with the SOS to include certain disclosures with the solicitation.

DETAILED ANALYSIS

Overview

The bill amends the law related to fraudulent business filings, including prohibiting certain actions and coordinating how the Attorney General (AG) and Secretary of State (SOS) address such filings. The bill also modifies the law governing appointment of statutory agents by corporations and other legal entities and establishes regulations for commercial solicitations related to filing or retrieving public records.

Fraudulent filings

Prohibitions

The bill prohibits all of the following:

- Including the name of another person on a document filed with the SOS under the Commercial Transactions Law or the Corporations and Partnerships Law without that person's consent, if the named person is included in the filing as:
 - A statutory agent;
 - The individual causing the document to be delivered for filing;
 - The person incorporating, forming, registering, or organizing an entity or name registration;
 - Any other person required to be identified in the document.
- Including an address in a document filed with the SOS under the Commercial Transactions Law or the Corporations and Partnerships Law without the consent of either the owner or occupant of that address;
- Delivering a document to the SOS required by the Commercial Transactions Law or the Corporations and Partnerships Law concerning another person, without the necessary consent or authority to do so.¹

¹ R.C. 111.243(A).

Complaint requirements

The bill allows a person named in, or affected by a potential fraudulent filing to submit a complaint to the SOS. The complaint must be on a form prescribed by the SOS, and must include at least the following information:

- A description of the alleged violation;
- The name and contact information of the person making the complaint;
- The name and contact information of any third party authorized to submit the complaint on behalf of the person that is named in, or affected by, the fraudulent filing;
- The document identification number assigned by the SOS to each alleged fraudulent filing;
- If known, an identification number assigned by the SOS for each person associated with the complaint and the filing;
- Information, if known, identifying each person involved in the filing, including names, street addresses, telephone numbers, websites, and electronic mail addresses;
- Information, if known, identifying the nature of any business or personal relationship between the person making the complaint and each person involved in the filing;
- A statement by the person making the complaint, under penalty of perjury, that the person believes in good faith that the facts stated in the complaint are true;
- Any additional information that the person making the complaint believes may assist the investigation.²

Review and evaluation

The SOS is required to review all complaints received under the bill and evaluate whether the complaint indicates a fraudulent filing and satisfies the content-related requirements described above. If so, the bill requires the SOS to refer the complaint to the AG for review and investigation.

If the SOS determines that the information provided in a fraudulent filing complaint does not indicate a fraudulently filed document or does not satisfy the relevant complaint requirements, the SOS is required to notify the person that submitted the complaint and provide an explanation of any deficiencies.

The SOS may also ask a person who submits a complaint to submit additional information concerning the alleged violation or the person's failure to submit the required complaint information. Regardless of the outcome, the SOS must notify the person who submitted a complaint of the outcome of the SOS's review of the complaint. If the SOS rejects a

² R.C. 111.243(B).

complaint for failure meet the relevant complaint requirements, the complaint may be resubmitted.³

Commencement of investigation

The AG, upon receiving a fraudulent filing complaint referred by the SOS, is required to review and determine whether to investigate the complaint. If the AG decides to investigate the complaint, the AG is required to send a written notice and demand to the address of the person who is the subject of the complaint or the person's registered agent of record listed in the SOS's online filing system. The AG must also send a copy of the notice and demand to the person's or agent's electronic mail address, if that address is available.

If a telephone number is available, the AG must attempt to contact the person or the person's registered agent by telephone. The AG may provide written or verbal notice and demand to any other person that the AG determines, through investigation, is a means by which to reach the person who is the subject of the complaint.⁴

Content of notice and demand, and the response

The AG's notice and demand must describe the allegations in the complaint and demand that the person respond within 21 days after the notice and demand was mailed. The response, which may come from the person to whom the notice and demand was mailed or that person's agent, is required to include all of the following information:

- The name and contact information of the person responding to the notice and demand;
- If the responding person is a registered agent of the person that is the subject of the complaint, any supporting documents that establish the agent's authority to act on the person's behalf;
- The name of the person that is the subject of the complaint;
- Information, if known, identifying each person involved in the alleged violation, including names, street addresses, telephone numbers, websites, and electronic mail addresses;
- 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, excepting any privileged communications or information;
- A statement that affirms or denies having knowledge of or information about the alleged violation;

³ R.C. 111.243(B) through (G).

⁴ R.C. 109.543(A) and (B).

- Any material evidence that is reasonably attainable to the person responding to the notice and demand of written consent to use the name or address in the filing at issue in the complaint;
- A statement by the person responding to the notice and demand, under penalty of perjury, that the person believes in good faith that the facts stated in the response are true;
- Any additional information that the person responding to the notice and demand believes may be useful in the investigation.⁵

Procedures following no response

If, within 21 days after mailing a notice and demand, the AG does not receive a response, the AG is required to send a second notice and demand and allow an additional 21 days for a response, which must comply with the requirements described above.⁶

If a person in receipt of a notice and demand concedes to a complaint, the AG must certify that fact to the SOS. If the AG does not receive a response within 21 days after mailing a second notice and demand, each allegation in the notice and demand is deemed conceded by the person that did not respond, and the AG must certify that fact to the SOS.⁷

Contesting the complaint

If a person in receipt of a notice and demand wishes to contest a complaint, the person may request an administrative hearing on the matter. If a person timely requests a hearing, the AG may refer the complaint to an administrative hearing. If the AG does not refer the complaint to an administrative hearing within 180 days after the AG receives the response to the notice and demand, the AG is deemed to have determined to not proceed with prosecuting the complaint. 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 21 days after the notice and demand is mailed.⁸

If a complaint is referred to an administrative hearing, the administrative law judge presiding over the matter is required to hold a hearing within 60 days after the AG refers the complaint and is required to render a decision within 15 days after the hearing. Upon a motion by the AG or the person contesting the complaint, the administrative law judge may grant an extension of up to 30 days or, upon showing good cause, longer than 30 days.⁹

⁵ R.C. 109.543(C).

⁶ R.C. 109.543(D).

⁷ R.C. 109.543(E).

⁸ R.C. 109.543(F).

⁹ R.C. 109.543(G).

Findings

If the administrative law judge finds that a fraudulent filing has been made, the administrative law judge must make additional findings as to whether the filing was unauthorized and whether an entity was created without authorization, or for fraudulent purposes. If the administrative law judge finds that an entity was created without authorization or for fraudulent purposes, or that an unauthorized filing was made for a legitimate entity, the AG must certify that fact to the SOS.¹⁰

The decision of the administrative law judge is subject to review by the court of common pleas of Franklin County or the court of common pleas of the county in which the person that is the subject of the complaint resides or conducts business. The SOS and the administrative law judge are not necessary parties to the review.¹¹

The AG is required to communicate the findings made by the administrative law judge to the person who submitted the complaint, each person at issue in the complaint, and the SOS.¹²

Resolving fraudulent filings

Upon receiving notice from the AG that an entity was created without authorization or for fraudulent purposes, the SOS must do all of the following:

- Cancel the business record in question with a notice that the entity is unauthorized or fraudulent;
- Redact each address and name that was used without authorization from the entity's filing and from any other relevant filings;
- Disable additional filing functionality on the entity's records.

Upon receiving notice from the AG of an unauthorized filing made for a legitimate entity, the SOS must do both of the following:

- Cancel each unauthorized filing for the entity with a notice that the filing is unauthorized;
- Redact each address and name that was used without authorization from the entity's filing and from the relevant filings.¹³

¹⁰ R.C. 109.543(H) and (I).

¹¹ R.C. 109.543(J).

¹² R.C. 109.543(K).

¹³ R.C. 111.243(H).

Penalties

A fraudulent filing violation constitutes a deceptive act or practice in connection with a consumer transaction under the Consumer Sales Protection Act (CSPA) and is subject to any applicable penalties. The CSPA authorizes both the AG and consumers to sue alleged violators. Suits brought by the AG could result in civil penalties of up to \$25,000 and suits brought by consumers could result in treble damages plus up to \$5,000 in noneconomic damages.¹⁴

A concession or failure to timely respond to a fraudulent filing notice and demand or a determination by an administrative law judge constitutes a prima facie showing that fraudulent filing violation has occurred.¹⁵

Statutory agents

The bill makes changes to the law related to statutory agents. Statutory agents are the persons designated by a corporation or other legal entity to receive processes, notices, or demands required or permitted by law. Many legal entities are required to designate a statutory agent.

Current law requires an appointment of a statutory agent to set forth the name and Ohio address of the agent. The bill expands this requirement by also requiring the appointment to include the address of the agent's primary residence in Ohio or, if the agent is not a natural person, the agent's usual place of business in Ohio. The bill defines "usual place of business" as a place in Ohio that is customarily open during normal business hours and 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 person serving as a statutory agent. The bill specifies that a post office box does not qualify as a "usual place of business," regardless of whether that post office box has an associated street address. The bill makes this change for statutory agent requirements for for-profit and nonprofit corporations, associations, limited liability companies, business trusts, real estate investment trusts, partnerships, and limited liability partnerships.¹⁶

Limitation on reinstating certain business entities

Current law allows corporations, associations, and limited liability companies that have been abolished to be reinstated if the entity files an application with the SOS and pays a filing fee or reinstatement fee, depending upon the reason the entity was abolished. The bill limits the period in which such an entity can be reinstated to two years from the date on which the entity was abolished.¹⁷

¹⁴ R.C. 111.243(I)(1) and 1345.07(D); R.C. 1345.09, not in the bill.

¹⁵ R.C. 111.243(I)(2).

¹⁶ R.C. 1701.07, 1702.06, 1703.041, 1706.09, 1746.04, 1747.03, 1776.07, and 1782.04.

¹⁷ R.C. 1701.07, 1702.06, 1702.59, 1703.15, 1703.29, 1706.09, 1729.11, and 1785.06.

Solicitations related to public records

The bill establishes new regulations for commercial solicitations related to filing or retrieving public records. For the purposes of these changes, the bill defines “solicit” or “solicitations” as meaning the act of directly advertising to a person. However, these terms do not include either of the following:

- Communication initiated by a consumer;
- Advertising or marketing to a person with whom the solicitor has a current or former commercial relationship.

Under the bill, any person, other than the federal government, the state, a state agency, or a local government, that solicits a fee for filing a document with, or retrieving a copy or certified copy of a certificate or public record from, the SOS must do all of the following:

- Include a statement in the solicitation, in the same language as the solicitation, that is identical or substantially similar to the following: “This is an advertisement. This offer is not being made by, or on behalf of, any government agency. You are not required to make any payment or take any other action in response to this offer.”
- Ensure, if the solicitation is in writing, that the statement is in at least 24-point type and located at the top of the physical document or the beginning of the electronic communication.
- Include, in the case of mailed solicitation, the words “THIS IS NOT A GOVERNMENT DOCUMENT” in 24-point type and all capital letters on the envelope, outside cover, or wrapper in which the solicitation is mailed;
- Include information on where the person can file a document directly with the SOS or retrieve a copy or certified copy of a certificate or public record;
- Include the name of the person making the solicitation and the person’s physical address, which cannot be a post office box.

The bill prohibits public records solicitations in a form, or that use deadline dates or other language, that makes them appear to be issued by the federal government, the state, a state agency, or a local government, or that appears to impose a legal duty on the person being solicited.

A violation of the bill’s solicitation requirements constitutes a deceptive act or practice in connection with a consumer transaction in violation of the CSPA and is subject to any applicable penalties. The CSPA authorizes both the AG and consumers to sue alleged violators. As discussed above, suits brought by the AG could result in civil penalties of up to \$25,000 and

suits brought by consumers could result in treble damages plus up to \$5,000 in noneconomic damages.¹⁸

HISTORY

Action	Date
Introduced	03-28-23

ANSB0098IN-135/ks

¹⁸ R.C. 111.242 and 1345.07(D); R.C. 1345.09, not in the bill.